

Supreme Court Clerks: What They Did, Where They Are Now

Since its beginning, the J. Reuben Clark Law School has produced four U.S. Supreme Court clerks. Each of the clerks, beginning with one from the charter class of 1976, has served a year's term with a Supreme Court justice and carried away the experience to his chosen career in law. The following are brief accounts of the tracks the clerks have followed during and after their significant experiences with the U.S. Supreme Court.

Monte N. Stewart

Monte Stewart clerked for Chief Justice Warren Burger during the 1977-1978 term. However, it almost never came to be. Before the chief justice reviewed Stewart's application, Stewart had given up hope of a Supreme Court clerkship. He had dutifully submitted applications with Justices Rehnquist, Powell, and White, and Powell and Rehnquist had granted him an interview. Both, however, declined to offer him a clerkship.

"Justice Powell's rejection letter was the nicest I've ever received," said Stewart. "He's the quintessential Southern gentleman. It almost made me feel good."

The chief justice was the only remaining possibility, but Stewart and his wife, Anne, considered withdrawing his application "because of Anne's concern the clerkship would be like law school."

"We decided not to withdraw the application mainly because we thought it was such a long shot and that it was virtually certain I would not get the clerkship," he said. They were wrong. "I learned later that Powell told the chief about me and said some very favorable things," Stewart said.

The chief justice sent one of his clerks west to interview Stewart. The visit turned out favorable, so Burger called on Judge J. Clifford Wallace of the Ninth Circuit, for whom Stewart had previously clerked. "The chief justice visited with Wallace to see what kind of clerk I had been, and Judge Wallace went to bat for me," he said. Two weeks later, Stewart received word he had been selected.

In July 1977 his family moved to the Washington, D.C., area. Stewart described the following year there as "wonderful" for his family, the experience being much more tolerable than law school. "I worked hard. The pressure to keep up with deadlines was great, but we did manage to keep abreast of the work."

Stewart's coclerks consisted of one midwest Jewish graduate from Harvard, a southerner from the University of Virginia, and one "all-American kind from everywhere," who was also a Harvard graduate. "I was the Mormon from Las Vegas," Stewart said.

"I came to like the chief very much—he was warm, friendly, personable, and even fatherly toward us."

Stewart said he learned from reading the briefs of then Solicitor General Wade McCree that a simple, direct, conversational style of writing was the best.

A Supreme Court clerkship has a way of changing one's possibilities. At the time the charter class was donning graduation caps and gowns, there were no firms coming on campus to interview. "It was tough—nobody could get a job with a big firm," said Stewart, "no matter what your credentials were, even if you were editor-in-chief of the law review and top of your class. We plastered one room of the law review with rejection letters from big firms."

"Suddenly (after the clerkship), I'd get telephone calls out of the blue from senior partners of top firms around the country calling as if we were good buddies and wanting to see if I would go with their firm."

Stewart stuck with the firm that originally hired him out of law school—Gibson, Dunn & Grutcher in San Diego. In 1981 he moved to Las Vegas to join his uncle's firm, Heaton & Wright. His uncle died in October of 1982, and the following May, Stewart formed his present firm—Wright, Shinehouse & Stewart. The firm started with three lawyers, has six now, and expects to have eight by the end of summer. Stewart's practice encompasses civil litigation, business, and some antitrust, but no domestic law or personal-injury cases.

Stewart and his wife have seven children, all boys.

Eric Andersen

Eric Andersen followed close on the heels of Stewart, also clerking for Judge Wallace on the Ninth Circuit and applying with Justice Lewis Powell (for the 1978-79 term). This time around Justice Powell

opted for a BYU graduate. Andersen said part of the reason he received the clerkship was Powell's personal "affirmative action" policy in recruiting clerks. Powell generally secured three clerks from the more prestigious law schools, and then he would be "willing to go with a lesser-known school." The justice would go out of his way to give the top students of lesser-known schools a chance for a clerkship, and Andersen, being in BYU Law School's second graduating class, filled Powell's fourth spot. Andersen added that a recommendation from then university president Dallin Oaks, who had ties with Powell, was an additional boost.

The term followed in the shadow of the *Bakke* case, so the media did not publicize it as heavily as previous ones. "Amazingly enough, we did not have any death-penalty cases," Andersen said.

After the clerkship, Andersen stayed in Washington, D.C., with the firm of Vinson & Elkins, where he had previously clerked. The firm soon had an opening in its London office, and Andersen and his wife, Catherine (a Law School charter-class graduate), jumped at the idea and were off to England.

The thrust of Andersen's practice in London came from the natural resources of the neighboring North Sea. "I was involved in international oil and gas law, drafting contracts relating to joint ventures or petroleum sales or leases with government. I worked with the Danish government and their national oil company and helped them draft contracts."

In 1984 Andersen decided to leave the world of professional practice and enter the halls of academia.

"Ever since law school, I had wanted to be a law school teacher," he explained. "My interest had always been strong in teaching. After a while, we knew we'd have to make the jump sometime from practice to teaching so we wouldn't get too used to the lifestyle and salary of practicing."

Andersen and his family decided the time was right and left London so he could join the faculty of the University of Iowa's College of Law. "The single most important thing for getting a job teaching was the clerkship with Powell," Andersen said.

He is now an associate professor and teaches two first-year contracts courses and a family-law course. Catherine also is involved with the college, assisting with the first-year legal writing program.

Andersen has just finished an article about good faith and the enforcement of contracts and is submitting it for publication.

"I'm happy with the jump to teaching, and I certainly intend to stay a long time. I still miss the excitement of practice, but the first three or four years of teaching are really not less busy than practicing."

Andersen spends his free time with Catherine and their three children.

Kevin Worthen

Kevin Worthen, the third graduate to clerk with the Supreme Court, is now in Phoenix as an associate in the natural resources department of the Jennings, Stouss & Salmon firm.

Worthen splits his time three ways between Indian law, appellate courts, and environmental law.

Of the three, Worthen most enjoys Indian law. "It's a new area of law with few court decisions. It's about Constitutional issues, and most of the issues that come up deal with the rights of Indians and government regulation. It's sort of an uncharted area of law for someone to practice in."

The roots of Worthen's practice in Indian law were planted in law school. "The school offered an Indian law course, so I took it," he said. "They cleverly disguised it as a horizon course. It was more valuable practically than other horizon courses, and it sparked an interest."

The interest grew while Worthen clerked for Justice Byron White through the 1983-84 term. During that time three or four Indian law cases, which Worthen found "particularly interesting," reached the Supreme Court. After the clerkship he headed southwest to Phoenix, where the practice of Indian and environmental law flourishes.

Worthen recounts that during his clerkship he spent roughly half of his time working with writs of certiorari and the other half writing short summaries and writing and drafting opinions. He described what he learned as "probably of limited practical value. I learned to know what judges look for, although it's often an individual matter and varies with each judge. It tends to be judge specific."

The justices themselves were friendly to the other clerks, Worthen said. "Rehnquist and Brennan made a point to get to know

the other clerks. Burger and Marshall made little effort, and the others fell in between."

As far as opening new possibilities, the clerkship "opened doors I didn't walk through," Worthen said.

"Teaching positions were a lot more available. I talked to a couple of universities, but I decided not to do it. I also interviewed with some firms in Washington, D.C., who wouldn't have talked to me except that I had clerked with the U.S. Supreme Court."

Michael Mosman

Michael Mosman is the most recent graduate to have clerked for the Supreme

Worthen, his wife, Peggy, and their two-year-old son just moved into their new house. (They're expecting their second child in July.) Worthen spends much of his free time landscaping the yard, a task he feels has turned out to be "harder than I ever thought."

Worthen will be joining the BYU Law School faculty in August.

Court. On completing the clerkship, Mosman "wanted to go to the smallest city that had a good legal system" and consequently is now in Portland as an associate with the Miller, Nash, Wiener, Hager & Carlsen law firm.

The firm's emphasis includes general legal practice, work for timber companies, import and export in the Pacific Rim, and political work in the Portland area. At an individual level, though, Mosman says, "I carry

partners' briefcases and lick envelopes."

A bit more serious, he adds, "I'm trying to learn to be a litigator, but I don't have a particular area of emphasis. I'm not ready to decide yet—I'm sort of all over the map."

When not at the firm's offices, Mosman, his wife, Suzanne, and their three children enjoy the luxury they could never previously afford: time.

"Saturday mornings we tend to take off. We'll usually go to the coast or the

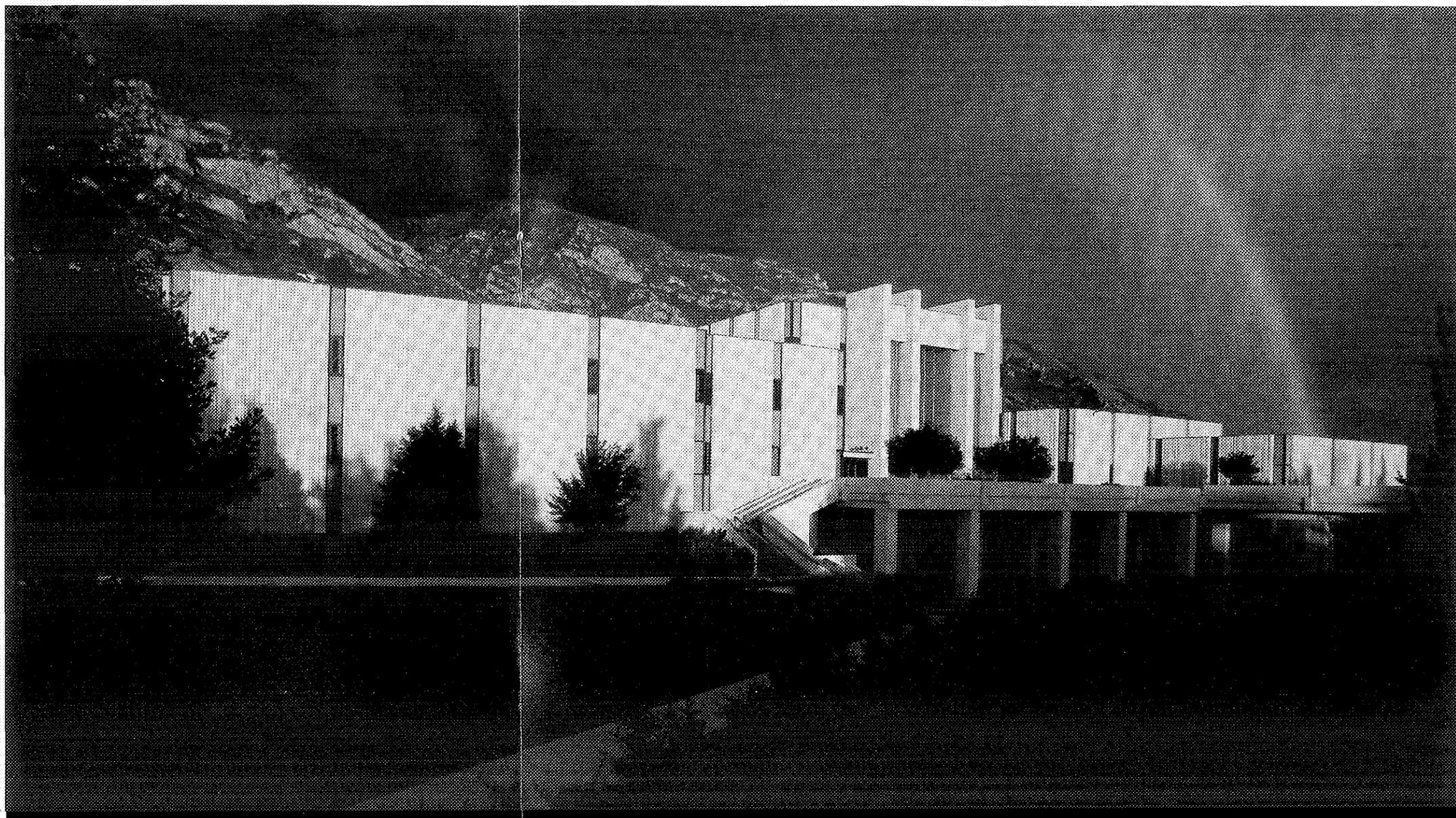
mountains. Our neighbors complain that I don't mow the lawn, but I'm trying to make up to my family the time I've been away the past few years."

Mosman graduated in 1984 and has spent the intervening years clerking, first for Judge Malcolm Wilkey on the D.C. Circuit and then for Justice Powell during the 1985-86 term.

"The two years in Washington, D.C., were a fantastic experience. I worked hard for Judge Wilkey, and I worked

harder than I cared to for Justice Powell. But I know we'd do it again without question or hesitation."

The Supreme Court work was exhaustive, though Mosman said that Powell never demanded anything that was unnecessary. Mosman would arrive at about 6 a.m. so he could leave earlier and spend part of the evenings with his family. The justice, who came in six days a week and worked from 9 a.m. until after 6 p.m., accommodated Mosman's schedule.



"The year before Powell had an operation," he said "Although his physical stamina is not what it has been, it still is good. And his mental ability has not diminished one bit "

Mosman also describes Powell as the classic Southern gentleman. "We had more capital-punishment cases last term by far than any since 1976 During the times when they came in, there was no way we could leave for anything—Powell knew that One time, however, my wife was sick Powell knew we had three children and found out that my wife was ill. So, he insisted on paying out of his own pocket for a private professional nurse to come in and take care of my wife and the children while I had to be away working for him

"We ended up not using the nurse, but it was all set up He wouldn't take no for an answer Powell wouldn't feel comfortable keeping me there while my wife was sick "

After working with some of the top legal minds in the country, Mosman summed up the preparation of his legal education at Law School: "I went into both my clerkships really concerned about how a BYU graduate would stack up against graduates of the best schools in the country I felt that the training I had at BYU prepared me to go toe-to-toe with those people I was really pleased to see that I didn't feel shorted It wasn't because I took any special advantage of possibilities during school. Anyone who puts a decent amount of effort into law school at BYU will come out with the same training as any prestigious school graduate "

Lawrence J. Jensen Receives Alumnus Service Award

Lawrence J. Jensen, currently an assistant administrator for the Environmental Protection Agency (EPA), received the 1987 Alumnus Service Award during the J. Reuben Clark Awards Assembly on March 19

Jensen, who is a graduate of the charter class of 1976, has been an active supporter of the Law School since his graduation He has helped students find employment in government service and served on the school's Board of Visitors from 1984 to 1986

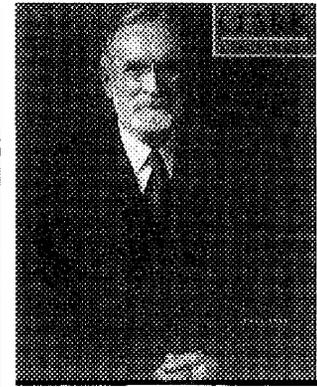
Since graduating from the Law School, Jensen has spent the bulk of his career in government service "I started in the Department of Justice, then moved to the Department of the Interior and then with the EPA," Jensen said "There was a short time when I worked in private practice with Jones, Waldo, Holbrook & McDonough in Salt Lake City."

Jensen's current position gives him responsibility for 2,500 employees throughout the country Specifically, his department is charged with enforcement of environmental regulations under the Clean Water Act and the Safe Drinking Water Act "Our duty is to regulate the dumping of waste products into the nation's waterways and to set standards for the quality of drinking water in the country," he said Jensen was appointed to his present post in 1985 by President Reagan

Over the eleven years since the charter class left the law school, Jensen's career has carried him to 62 cities in 30 states He reflected on some of his experiences in the practice of law "When I first got out, I worked for the Justice Department I found myself working as co-counsel in the only case ever filed by the federal judiciary against the government alleging an unconstitutional reduction of wages due to the inflationary factors in the economy That was the type of action where no attorney could win," he noted, "and I didn't "

Jensen was also involved in a case where a private citizen sued the Federal Bureau of Investigation because it had steamed open the letters she sent to a man she knew in the Soviet Union "That was my first trial," he said While he was with the Interior Department, Jensen worked on land and water claims made by the Indian tribes "Up to that time, I had not been aware that there are 270 semisovereign Indian tribes that effectively have their own judicial systems," he said

Jensen did his undergraduate work at Yale and the University of Utah He noted that he entered the charter class with the "help" of Dean Rex Lee "I attended an informational meeting about the Law School and approached Dean Lee to get more information I introduced myself and Dean Lee turned to President Dallin Oaks and said 'President Oaks, I want you to meet the first member of the charter class ' I guess I was kind of committed to attend the J. Reuben Clark Law School at that point."



Memorandum and Its Photographer and Designer Receive Kudos from CASE

The Council for Advancement and Support of Education (CASE) awarded the Clark Memorandum a silver medal in a recent national competition "The award means *Clark Memorandum* was judged as one of the finest publications of its kind in the nation," said Claude Zobell, editor The magazine competed against 142 other entries and was evaluated on content, editing, writing, design, photography, and use of resources.

CASE also named John Snyder, whose photo is on the cover of this issue, the national photographer of the year Linda Sullivan, art director of the Clark Memorandum, was designated national designer of the year Both the individual awards included a \$1,000 prize.

Law School Team Places Second in National Negotiations Competition

BYU Law School's representatives in the National Negotiations Competition captured second-place laurels in the third annual competition held in New Orleans on February 14. This is the first time BYU has fielded a team in the competition. Duncan Barber from Los Angeles, California, and David Crapo from Idaho Falls, Idaho, both third-year students, earned the right to represent the school in the competition by finishing first in the intraschool competition and by winning the regional competition hosted by BYU in November. Twenty-two teams participated in the school competition.

On the regional level Barber and Crapo competed against teams from the University of Denver and Arizona State. As the host school, BYU was able to field two teams in the regional competition. Each of the twelve regions in the country sent one team to the national competition.

Participants in the contest represent a client in a mock negotiations setting against an adverse party. Both sides of the negotiation receive the facts of the dispute about three weeks before the competition. Each team also receives "secret facts," unknown to the other side, that reflect the position of its own client.

Each round of the competition is scored by four judges who are either attorneys, judges, or

arbitrators. The negotiating techniques of the competing teams are judged on a scale of one to seven, four representing the skills of a standard attorney. "The judges are looking for effectiveness of presentation, teamwork, strategy, ethical conduct, and how well the negotiators represent the will of the client," according to Crapo.

The BYU team met the team from George Washington in the first round of the national competition, and Northwestern in the second



*Duncan Barber, left,
David Crapo, right*

round. The winners of the competition were determined by a compilation of total points obtained. Rutgers Law School took first in the competition.

Barber and Crapo will be joining the Holme, Roberts & Owen after graduation. Barber will be in the Denver office. Crapo will work in the Salt Lake office after a clerkship with Judge Monroe McKay of the Tenth Circuit Court of Appeals.

Law School Celebrates "The Blessings of Liberty"

The United States Constitution is effectively a structure of power and a beacon of hope for continued liberty and freedom for all Americans," according to Margaret Bush Wilson, former chairperson of the NAACP Board of Directors.

Wilson was the inaugural speaker in a series of lectures and panel discussions on the Constitution being sponsored by the J. Reuben Clark Law School as part of the bicentennial celebration commemorating the signing of the document. The series has been entitled "The Blessings of Liberty" and included Wilson's address on February 26, followed by a panel discussion composed of federal and state judges on March 5. In addition, the 1987 commencement featured Eugene Thomas, president of the American Bar Association. Lectures in September and October will include legal scholars from throughout the country.

Wilson, a well-respected lawyer and civil rights activist, characterized the Constitution as a structure of power, because it is not a government but has provided the framework through which a government was established. Through this document, the ideals of separation of powers, federalism, and fundamentals of liberty became inherently available to every person.

From a historical perspective, Wilson said the battle for the Constitution

following the Philadelphia convention was won in Massachusetts on February 5, 1788. "Nineteen people voting in the Massachusetts legislature provided the margin of victory by which that state ratified the Constitution," she said.

"Many historians believe that the Constitution would not have been ratified if it had lost in Massachusetts "

By providing an account of her experience with *Shelley v. Kraemer*, 334 U.S. 1 (1948), which is rarely taught in law school classrooms, Wilson illustrated the nature of how the Constitution works as a structure of power.

"That experience taught me that a single person, acting on principles of fairness and justice, can make a difference within the structure established by the Constitution. Moreover, it is incumbent on each of us to use that structure to preserve, for ourselves and our children, the basic freedoms we enjoy."

The next event in the series on the Constitution was held as a counterpart to the 1987 J. Reuben Clark Moot Court finals. Judge Thomas M. Reavley of the United States Circuit Court of Appeals for the Fifth Circuit, Judge Ellsworth Van Graafeiland of the United States Circuit Court of Appeals for the Second Circuit, Judge David Sam of the United States District Court for the District of Utah, and Judge Robert Corcoran of the Arizona Court of Appeals each provided a "Judge's Perspective on the Constitution "

Reavley discussed the nature of constitutional interpretation that has evolved over the last 200 years. "Of course we must

approach the Constitution by looking at the actual text," he said. "But the text must be construed in terms of the context in which the document was drafted in combination with the consensus of public opinion of our modern day. The drafters purposely drafted vague expressions to allow the Constitution to be flexible enough to adapt to the changing needs of our society "

However, beyond the means of interpretation, Reavley suggested that the bicentennial should be a time when Americans look at the Constitution with an eye to discerning how we can make it continue to live and work. "Most people do not understand the hopelessness of the situation from which the Constitution emerged. The deliberations were held in secret because it was not the original purpose of the delegates to draft a new document, but to amend the Articles of Confederation. The situation was so bad that James Madison, in correspondence with Thomas Jefferson, characterized the emergence of the document as 'a miracle.' We must consider how it was that a miracle could come out of Philadelphia and how we can keep the miracle alive," Reavley said.

Van Graafeiland, by assuming the role of a "devil's advocate," hypothesized about subjects that might be topics for discussion if a new constitutional convention were called. "I think there would be discussion about the Equal Rights Amendment. There would possibly be a discussion about abortion and a balanced budget, but I have

concluded that there are other significant topics that might receive the mandate of constitutional authority.

"For example, there might be an amendment that eliminates punitive damage awards to plaintiffs. The purposes of punitive damages are not met through the award of millions of dollars to private persons, and perhaps we would be better served by a strict limit to recovery of compensatory damages "

"In addition, there might be an amendment to disallow the use of 'racial preference' as a remedy for racial discrimination in civil rights areas "

Sam told an inspirational story about how his parents immigrated to the United States because they felt that liberty and freedom were more precious than life itself. "My appreciation for the Constitution does not stem from my legal training or career, but from the values instilled in me by my parents," Sam said. "My parents lived in Transylvania and my father left on foot to try to reach the United States. When he arrived and was able to bring my mother over, he acknowledged that a strength beyond his own helped him accomplish his goals "

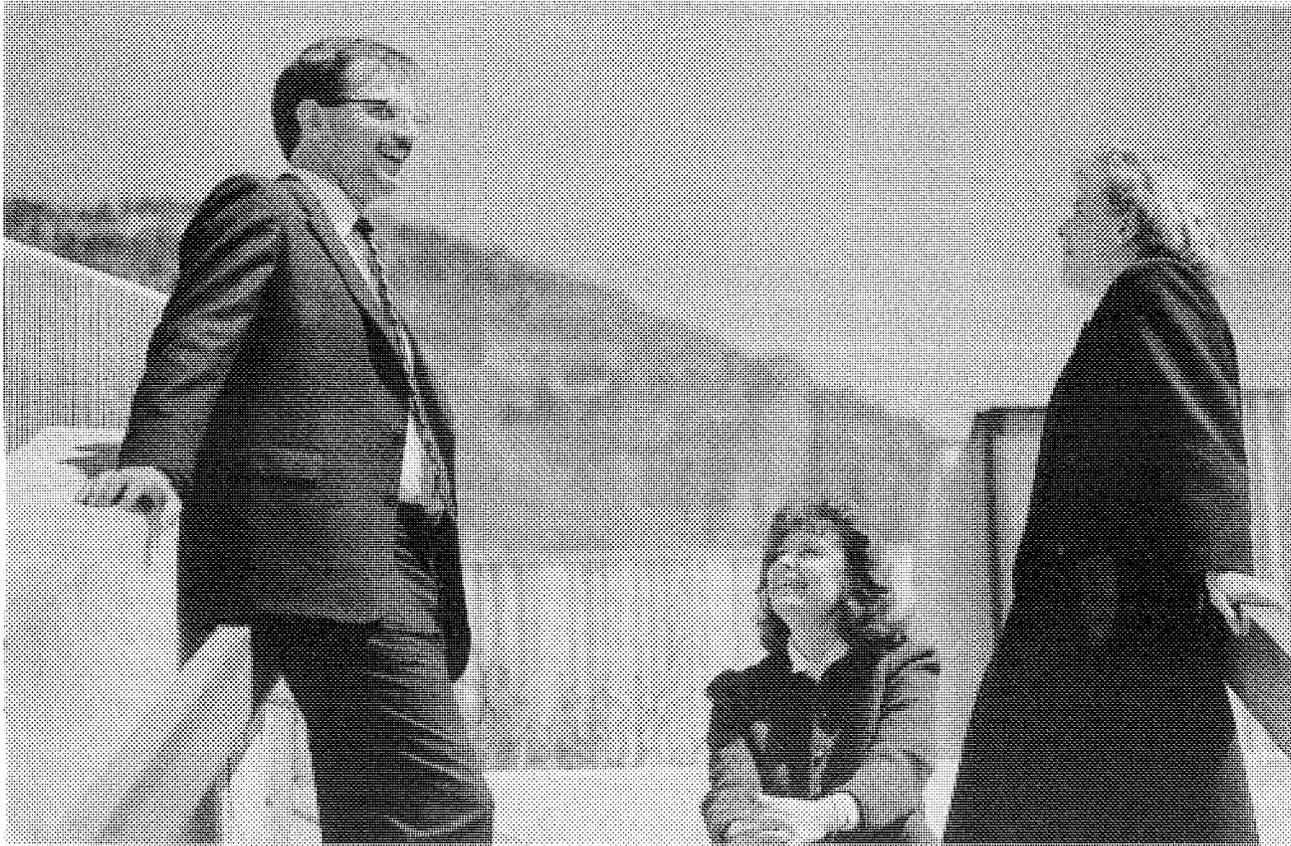
The unique character of the Constitution rests in its formulation of three separate and independent branches of government that function through interdependency, according to Sam. "Each branch has its own power, but each relies on the other to the extent necessary to secure liberty and freedom under the Constitution. One must wonder how such a cluster of genius was found in America in the late eighteenth century when a

similar concentration of talent has never been seen again across the skies of American leadership. For myself, the answer lies in the scripture where the Lord said he raised up wise men for the very purpose of establishing the Constitution."

Corcoran emphasized the renaissance of state constitutions. "During the era of the Warren Court, state constitutions atrophied as the federal Constitution became the primary basis for decision in state and federal courts. However, in the Burger/Rehnquist era, state courts have been more willing to use their own state constitutions to determine the fundamental rights of litigants," Corcoran said.

Moreover, some provisions of state constitutions are interpreted more strictly than the federal Constitution. "For example, the Supreme Court of Oregon interpreted its provision regarding obscenity more strictly than it would have been under the federal Constitution. This divergence between interpretation of state and federal constitutions is becoming more pronounced in several areas, and lawyers should consciously become more familiar with the provisions of their state constitutions. Too many lawyers have been ignorant of the usefulness of their state constitutions and to an extent have been guilty of malpractice " Corcoran said.

He concluded by suggesting that the occasion of the bicentennial is a good time to discover the rights secured for all Americans under the auspices of each state's constitution as well as to celebrate the signing of the federal Constitution.



Moot Court Team Captures Title

Continuing the winning tradition established by the Moot Court Program at BYU Law School, Kristin Smyth and Tamar Jergensen, both second-year students, and Richard Bevan, a third-year student, captured top honors at the Seventeenth Annual William B. Spong, Jr., Invitational Moot Court Competition, sponsored by William and Mary Law School in Williamsburg.

Invitations to participate in the competition are based on the demonstrated strength of a law school's moot court program. Schools that fail to perform well in the competition over two years are no longer invited, according to Jergensen. Twelve teams faced off in

this year's meet. Schools participating, in addition to BYU, included Maine, Cardozo in New York City, Brooklyn, New York Law School, Arkansas, Southwestern, Villanova, University of Richmond, George Mason, Cleveland-Marshall, and the University of Virginia.

The problem argued this year involved issues under the First and Fourteenth Amendments to the Constitution. Participating teams argued for or against the constitutional protection of the private possession of child pornography.

To reach its first place finish, BYU's team participated in five arguments: two preliminary rounds, a quarterfinal, a semifinal, and the final round against the team from the University of Virginia Law School.

Richard Bevan, Kristin Smyth, and Tamar Jergensen (left to right).

Membership on the Board of Advocates, BYU's moot court program is based on several factors. Students whose first-year grades place them in the top 20 percent of the class receive an invitation to join the program. The board also conducts a write-in competition and extends invitations to the winners of the first-year moot court competition.

Smyth, from Sacramento, California, is clerking in Washington, D.C., this summer, as is Jergensen, a University of Utah graduate from Salt Lake City. Bevan returned to his hometown of Twin Falls, Idaho, after graduation to practice with the Nelson & Rosholt firm.

Law School Inaugurates New Law Journal

The Law School recently published the first edition of the *BYU Journal of Public Law*, a scholarly work prepared by participants in the Legal Studies Cocurricular Program.

In periodical format, the new *BYU Journal of Public Law* will include the work of both student and non-student authors and will focus on the legal relationship of citizens to their governments. "The rapidly expanding activities of various governmental units and the complexities of modern life raise new questions about the proper role and organization of government, the responsibilities of public officers,

and relations of governments with one another. The new periodical will provide a forum for scholarly opinion and analysis of these issues," according to Steven L. West, editor of the journal.

The new *Journal of Public Law* will replace the *Summary of Utah Law* series as the project produced by Legal Studies members. The first volume of the Utah law summary series, *Summary of Utah Real Property Law*, was published in the spring of 1978. Since that time the journal has published seven other volumes, each dealing with a previously unsummarized area of state law. These volumes provided needed assistance to the practicing bench and bar in Utah by bringing together, in single volumes, previously scattered segments of Utah statutes and case law. The summaries have been immensely helpful to lawyers and nonlawyers and are the only works of their kind in the state.

The first volume provided summaries of recent developments in Utah law, including articles on the Utah Consumer Credit Code, interstate banking, Utah governmental immunity, and water rights. Other articles in the edition discussed scientific evidence in paternity cases, regulation of alcoholic-beverage retail outlets, the insanity defense in Utah, drunk-driving statutes, equitable remedies under RICO, punitive damages, and criminal antitrust actions.

Although the first issue discussed Utah law only, subsequent issues will focus on the dynamics of national and international public law.

Professor Hawkins Heads Florida Tort and Liability Insurance Study

Professor Carl S. Hawkins, former dean of the J. Reuben Clark Law School, is leading a group of scholars who are conducting a study of tort law and its relationship to the "liability insurance crisis" for the state of Florida.

Hawkins was named executive director of the Academic Task Force for Review of Insurance and Tort Systems. "The task force was commissioned by Florida's legislature to conduct a comprehensive study of tort law and the insurance system. We hope we can develop possible solutions to problems involving insurance costs, insurance regulation, and the impact of tort law on the insurance business," Hawkins said.

The task force was formed as part of a series of actions taken by the Florida legislature during the 1986 session. Florida legislators, like lawmakers throughout the country, were bombarded with heavy lobbying pressure by the business community. They wanted changes in the tort system or the insurance business to relieve financial burdens created by insurance price hikes. Insurance rates have increased as much as 500 percent for some businesses, and in others, liability insurance is not available.

In response to the pressure, Florida passed several measures during the 1986 legislative session in addition to creating the task force. First, they provided

for better insurance regulation by requiring that insurance companies file reports with the Florida Insurance Commission, detailing results of every claim that is closed or settled. In addition, they empowered the commission with the ability to regulate commercial liability insurance prices.

Second, they made changes in the state's tort law by limiting damages for pain and suffering to a maximum of \$450,000. The legislature also modified their joint and several liability statutes so that defendants, if found liable, will only be liable for damages in proportion to their responsibility for the harm.

"These changes are similar to actions taken by many states over the last two years," Hawkins said. "But Florida went a step further by appropriating \$875,000 for an academic study of their tort and insurance systems. Though other states have conducted ad hoc studies about the problem, this is the first major effort to look at the relationships between tort law and the insurance system."

The task force is composed of the presidents of the University of Florida, Florida State University, the University of Miami, and two other people from the state. As executive director, Hawkins works with a paid staff of law professors, economics professors, and insurance experts from various Florida universities and the Florida community.

The study is scheduled to last until March 1, 1988, when final report must be given to the Florida legislature. An interim

report was presented May 1, 1987.

"Our task is not an easy one. Florida wants to develop a system in which liability insurance is both affordable and available for everyone. However, to develop helpful conclusions and recommendations, complex and difficult questions must be addressed," Hawkins said.

Tort law and its relationship to the cost of liability insurance is an important issue the task force will address. Hawkins noted there are many theories of why the "liability crisis" has developed. Insurance companies blame an overly litigious society and bar, in addition to overly generous juries, for their financial difficulties. However, lawyers and others point to mismanagement and poor judgment by the insurance companies as the reasons for the increases.

People who espouse this argument suggest that the price increases of the recent past have been the result of insurance companies attempting to make up for lost income due to a drop in investment income. "Some people say that when interest rates were high in the late 1970s and early 1980s, insurance companies did not increase their rates significantly because they were able to earn substantial profits on investment income. However, when interest rates fell, they lost that income and have increased rates significantly to mitigate their losses," Hawkins said.

An additional factor that will affect the study is the overriding economic forces affecting the insurance industry. Problems in the reinsurance market have

eliminated the availability of insurance for some kinds of risks. "For example, many day-care centers cannot get liability insurance because of the difficulty insurance companies have predicting their risks," Hawkins said.

In addition to looking at the relationship between tort law and insurance prices, the task force will also look at proposals for solving the problem. Though he admits he has not drawn any final conclusions, Hawkins said he expects that the most viable form of insurance will be commercial. "The key is to provide a market condition that will allow insurance companies to develop stable and predictable measures of their potential liabilities. Insurance providers argue that they have not been able to predict because of unusually high jury awards and an inordinate increase in litigation.

"Consequently, we will study the increase, if any, in litigation in Florida, whether there has been an increase in jury and judge damage awards, and whether these factors have any bearing in the cost of liability insurance."

Hawkins said he anticipates that the impact of the study on tort law reform or changes in the insurance system will depend on the political climate when their final report is released. "However, we also expect the study to make a serious contribution to the available literature in the field."

While he works on the study, Hawkins will work from his office at BYU during the fall semesters and will work in Florida during each winter semester.



Jean W. Burns Named Associate Professor of Law

Professor Jean W. Burns has been appointed as an associate professor of law at the J Reuben Clark Law School, according to Dean Bruce Hafen.

"Jean Burns is smart, highly professional, and has a fun sense of humor. She is also a strong and caring classroom teacher. We're fortunate to have her join us."

Burns came to the Law School in August 1986 after spending several years in private practice for the firm of Dechert, Price and Rhoads in Philadelphia, Pa. She was a commercial litigator and now teaches commercial law and conflicts. She is also serving as a member of the faculty committee on admissions.

"I have been very happy in my position here," she said. "It has been a stimulating experience to prepare for class, work with

students, and enjoy the camaraderie with my colleagues. I have also noticed that the students here are intelligent, hard-working, and seem to be friendlier than the students I know at other law schools."

As a litigator, Burns said she had many challenging and interesting experiences. "Commercial law is fun because I get to meet so many different types of clients. For example, one case would allow me to learn everything there is to know about Toyotas, while another case would allow me to become familiar with hotel design and management, and other cases exposed me to a broad range of business practices."

On the other hand, Burns noted that there is a negative side to a practice like hers. She said clients generally do not understand the legal system, and they seem to expect immediate results. Thus, they tend to be concerned about how long their claim will take. "But the worst part of dealing

with a client is when they find that they usually must pay attorney's fees even if they've won," she said.

The primary distinction Burns has found in switching from practice to teaching is the different perspective of the law. "In practice, I found that I worked reactively. As clients approached me with problems, it became a process of efficiently finding the best answer to their specific problem. As a teacher, however, I can look at the law proactively and try to determine where the law has been, and more importantly, where it should be going. Moreover, I am learning along with my students. I once thought I knew Article Nine of the Uniform Commercial Code perfectly, but as I prepare to teach, I am still able to see new little nuances I had not noticed before."

Burns' hometown is St. Louis, Missouri. She received her B.A. from Vanderbilt University in 1970 and her J.D. from the University of Chicago Law School. She was associate editor of the *University of Chicago Law Review* and a member of the Order of the Coif. After she graduated from law school, Burns spent two years working as a law clerk for Judge Wilber F. Pell, Jr., U.S. Court of Appeals for the Seventh Circuit.

Burns said she decided to move to the West because her husband, who is a physician, had a job opportunity at the University of Utah College of Medicine and because they have vacationed in the West for years and "loved it." However, she does miss having a major league baseball team around to cheer for.

Computers and Practice: BYU Professors Develop "CAPS"

While many lawyers are incorporating modern computer technologies into their practices, professors at the J. Reuben Clark Law School have developed a computer system that represents a "quantum leap" in computerized production of legal documents.

Professors Larry C. Farmer and Stanley D. Neeleman have worked together for the last twelve years to develop a highly sophisticated "Computer-assisted Practice System" (CAPS), which is capable of analyzing facts and developing accurate legal documents. "The project started when we discussed ways of using computers to improve the practice of law," Neeleman said. "We investigated existing software and consulted law firms interested in law practice systematization. Initially, we worked with a word processor in concert with a list-processing system to automate the preparation of wills."

However, the project moved past the word-processing stage when Marshall R. Morrise, a computer scientist, was hired to help develop special software, which has evolved into the current CAPS system. The program has been financed by the Law School and in part by West Publishing Company. With added financial resources the CAPS project expanded to develop software tools that could be used in many

areas of legal practice.

The result of the work of Farmer, Morrise, and Neeleman is a set of software that makes it possible for attorneys and other legal professionals to efficiently create sophisticated documents such as wills, estate plans, pleadings, etc.

"CAPS is designed to allow an 'expert' in a particular area of practice to develop a substantive set of instructions about how to complete a legal task and draft the language to be used in the document. This substantive data forms the 'practice system data base' which provides a basis for the interactive nature of the CAPS system," Neeleman said. "For example, if a lawyer needs to do an estate plan, he will need to gather the basic information from the client. Then, when he engages the CAPS system, it will ask him to input data gathered from the client. Depending on the way each question is answered, the CAPS program then analyzes the data and formulates a custom document for that client."

Though CAPS may be used for any type of practice involving the production of standard documents, the prototype currently being tested is in estate planning. Neeleman noted that as a CAPS user enters data into the system, it can be an educational tool as well. "We have created a footnote system designed to answer questions of the user. If, for example, a user does not know why the computer is asking a particular question, he can refer to the footnote to see why the expert that created the substantive elements felt the information is important. Moreover, the system can be updated to

reflect current case law and other developments," he said.

Morrise explained that the system is similar to the volumes of ring binders lawyers have used containing checklists, work sheets, example documents, and other materials. Usually the binders are divided into sections and elements so that the user can reference them. "CAPS is similar because the program is designed to categorize the elements necessary for the successful completion of a legal project. These elements can include text, practice logic, and other data that identify and track the steps to be taken in handling a matter, facts, and decisions, analyzing and advising on issues that should be considered in the disposition of a matter; and generating documents," he said.

The system prototype has been tested in a few locations and is currently being used in the Salt Lake City and Denver offices of Holme, Roberts & Owen Neeleman, who is also the managing partner of their Salt Lake City office, said they have found that CAPS has allowed them to reduce the amount of time required for the production of certain documents by 80 percent.

As a result of the efforts of professors Gerry Williams and Larry Farmer, Harvard's legal clinic is now using CAPS.

The Provo office of Legal Services, Inc., has also been a test site for CAPS. The lawyers there have been successful in rapidly creating numerous documents that are relevant to domestic relations (adoption papers, divorce documents, etc.)

Morrise said the development of CAPS is now at a stage where it may enter commercial production. However, there are some problems the CAPS developers are encountering in the production of the system. First, the system software is currently designed to work with VAX-Digital computer systems. "We are working to establish a means to convert the program so that it will be compatible on personal computers, but that has not happened yet," he said. Second, though people in the legal community who are aware of the system have been enthusiastic about its possibilities, there is a group of lawyers who resist change and think that if they do not do the work themselves, it is not done right. Finally, the successful use of CAPS in a law firm requires a strong commitment by firm management to devote the resources necessary to develop the substantive elements of the system. "This problem may be resolved through the development of systems for each jurisdiction to reflect the current law and thinking from state to state."

Neeleman feels that CAPS is particularly suited to providing legal services to people who need but typically do not seek legal assistance. "CAPS can allow the creation of expert documents at a fraction of what it typically costs most firms today. Therefore, it is possible for a lawyer to provide services to people who otherwise cannot afford legal services. We hope CAPS will be used to fill this gap that has developed in the delivery of legal services to the public," he said.