



The Study and Practice of

THE LAWS
OF MEN
IN LIGHT OF
THE LAWS
OF GOD

Elder James E. Faust

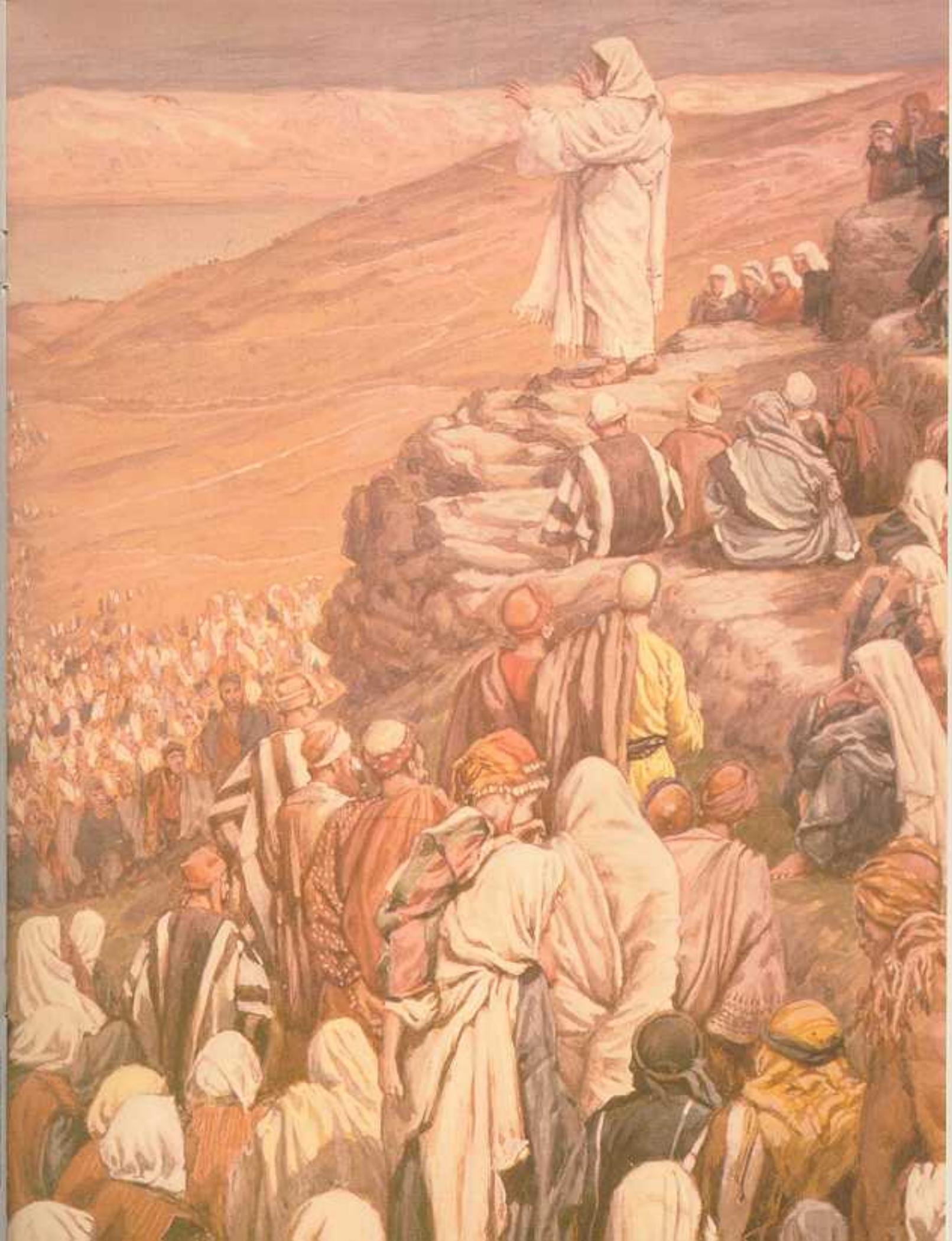
I AM HUMBLED by the presence of some of the distinguished members of the Law School faculty. As you would suppose, they are carefully chosen, even invited to this faculty, not only on the basis of what they know, but what they are. This faculty is competent and unique. Sister Faust and I have been grateful for and impressed by what this faculty has been able to do for two of our sons.

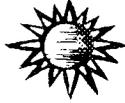
At the beginning I apologize to you because I will be drawing from my own experience. This is the risk you take when you invite an old, broken-down lawyer to speak to law students about the law. Even those who do not “suffer fools gladly” have to put up with such reminiscing in these circumstances (1 Cor. 11:19). Someone paraphrased General McArthur’s statement, “Old soldiers never die, they just fade away,” to “Old lawyers never die, they just lose their appeal.”

I hope that what I say of a personal nature will not be too subtle. President Hugh B. Brown told us of a lawyer who received an unfavorable ruling from the bench in one of Canada’s dominion courts. He reacted by turning his back on the judge. The judge asked: “Are you trying to show your contempt for this court?” The lawyer answered: “No, my Lord, I am trying to disguise it.”

Some time ago, Dean Bruce Hafen invited me to speak to you concerning a fundamental purpose for establishing the J. Reuben Clark Law School at Brigham Young University. My great respect for this school, as well as my gratitude for our system of law, encourages me to do so. My mentor, Dean Wm. H. Leary, a devout Catholic, taught us that a fundamental purpose of going to law school was to learn to think straight. He also taught us that our fundamental rights came from God himself.

*A fireside talk given to the students and faculty and
companions of the Brigham Young University J. Reuben Clark Law School
at the Pleasant View Chapel in Provo on November 22, 1987.*





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I wish to address a principle that President Marion G Romney announced at the dedication of the J. Reuben Clark Law School. This principle is that students at this school should study the laws of man in the light of the laws of God. I should like to enlarge this to the study and practice of the laws of man in light of the laws of God.

I alert you that if you practice law you must be prepared to answer people who ask how you can be a good member of the Church and a lawyer. This question stems not only from misunderstanding but also from the fact that the law and lawyers are generally controversial, and many of our court and administrative proceedings are adversary in nature. The Prince of Peace did not advocate controversy, but he was involved in it. The adversary system, imperfect as it is, has evolved as the best means of extracting the truth out of controversy. Is not truth to be sought above other virtues?

Lay people will ask how you reconcile your religious convictions with being an advocate for a "criminal" or a "crook." Many forget the fundamental principle that people are presumed innocent until convicted. I sincerely believe that no committed member of the Church who is trying to keep the laws of God needs to compromise his or her religious and moral convictions in the practice of law. The canons of ethics, with which I hope you will become fully acquainted, support and are in harmony with the moral teachings of the Church. These ethical standards fully encourage many of the moral principles of our Church, specifically those high standards of honesty, integrity, loyalty, truthfulness, and sincerity.

In my opinion there need be no conflict between what the Savior has taught through the Church and what you do as a professional lawyer. Indeed, if you are careful about observing the high moral standards that the Church represents, you will stand out in your professions. Sir Thomas More did. Although he was beheaded, he fitted well the description of Job, "a perfect and an upright man, one that feareth God, and escheweth evil . . . holdeth fast his integrity" (Job 2:3). The great lawyers I have known have also had great souls.

As an advocate, in a large measure you can establish the moral tone of the case by your own integrity. Because you represent someone who has allegedly done something reprehensible, it does not mean that you approve of that conduct.

You will have more choice in whom you represent than did the lawyers of my era. When I began my practice of

law, all members of the bar had the duty to give every person charged with a crime the best defense they could under the law, without charge. There were no public defenders nor public defense funds. We did not enjoy the luxury of patting ourselves on the back for doing *pro bono* work. We were obligated to. We had no choice. In the federal courts the clerk would start down the alphabetical roll of the Utah Bar, assigning common criminals to be defended by the next name to come up, be he the senior member of the bar with the highest Martindale-Hubbel rating in the largest firm, or the most penurious, newly admitted member. It was an aggravating chore but a noble effort.

In one of my early appointments as defense counsel, I appeared before our venerable ninety-year-old federal judge, Tillman D. Johnson. I was appointed to defend a young man charged with taking a stolen motorcycle across state lines. As we approached the bench, Judge Johnson, whose eyes were dimmed with age, said: "Which one of you is the accused?"

The canons of ethics and the rules of court with which you must be familiar are helpful rules of conduct to abide by, but I have always believed that they are the lesser law. An attorney's own careful conscience and his own standards of high integrity ultimately ought to govern his conduct. This is particularly true of the graduates of this law school, most of whom are conversant with and have taught and tried to live in accordance with the laws of God. This is all in harmony with scripture: "He that keepeth the laws of God hath no need to break the laws of the land" (D&C 58:21).

I direct your attention to the first general epistle of John, chapter two, verse 27: "But the anointing which ye have received of him abideth in you, and ye need not that any man teach you: but as the same anointing teacheth you of all things, and is truth, and is no lie, and even as it hath taught you, ye shall abide in him."

I think you can rely on those two verses to help you make moral decisions. I do not think, however, you can rely on them to teach you the rules of law. Do not expect your professor, who may be a high priest, to concentrate his lessons out of the scriptures, although occasionally he may wish to do so. His obligation is to teach you the secular rules of civil and criminal law and matters that relate to them, such as procedures. Your obligation is to learn the rules of law and related matters. The whisperings



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of the Holy Spirit will no doubt help you, but you must learn the rules of law, using Churchill's phrase, by "blood, sweat, and tears." There is an old Portuguese saying, "*Deus ajude os que trabalhe*" (God helps those who work). Just having a good heart does not get the job done.

May I now be more specific in terms of reconciling the laws of God in terms of having to live under the laws of man. I have always felt that the law could be a truly noble profession. That belief stems in part because the Savior is our advocate with the Father (D&C 110:4). That means everyone at times, in the broad sense, is entitled to or needs an advocate

I will confess to you that, when I say my personal prayers, I do not ask for justice, I ask for mercy. Since the Savior is our advocate with the Father, then everyone is entitled to justice: to have wrongs righted and, if truly repentant, to have a generous portion of mercy mixed in. That is my answer to the question of how can a lawyer represent "guilty" people. If the guilty are not entitled to an advocate, who then will be entitled to intercession before the judgment bar of God?

Of course, you can limit your practice to commerce and set yourself up as judge and jury, thus staying above the heart-breaking and the heart-rending matters that people bring into law offices. You can justify your conduct by saying to yourself, "This person is not worthy of my help." I must confess to you that, during the 20 years when I served as bishop or stake president and practiced law in a small office, I did not find much satisfaction in representing the large, soulless corporations with the deep pocket; I found more pleasure helping just common folks whose property and savings may have been at risk. They came into the office distraught and anguished. After they were told, "I think we can get this matter straightened out," they were greatly comforted.

While the time of the sole practitioner may about be gone, I still believe that you can be a good lawyer, have a good life, serve your church, your family, and your community, and not be a member of a large, prestigious law firm. Certainly you will have more independence and a more moderate lifestyle.

An attorney is a counselor. To help a client sort out the risks, exposures, and choices is a great service. Litigation itself is costly, hazardous, and often should be the last resort. Two attorneys of integrity and good faith can often negotiate a solution to difficulties with a better result

and with better feelings than a judge who, hearing the matter for the first time, has to decide for or against one or the other.

How do you reconcile your involvement in litigation with the Savior's Sermon on the Mount?

I should like to quote Arthur Nielsen, learned and experienced trial lawyer, currently special counsel to Brigham Young University in Jerusalem:

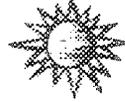
I do not believe that Jesus was trying to abrogate the principle of justice in our society. He was endeavoring to eliminate injustice. If a person has done another an injustice so that the latter has to sue him at the law to obtain justice, the offender should do more than merely pay that which is due; . . . he should give his cloak also. If a person smite thee on thy right cheek, do not retaliate with an aggressive blow, but show forth compassion rather than hostility. But where efforts of conciliation or reconciliation or compromise are not productive, we should not refuse to champion the cause of justice to institute the proper legal action or to defend against the possible injustices being done. [Private letter]

This philosophy is in harmony with direction given in Section 134 of the Doctrine and Covenants:

We believe that men should appeal to the civil law for redress of all wrongs and grievances, where personal abuse is inflicted or the right of property or character infringed, where such laws exist as will protect the same, but we believe that all men are justified in defending themselves, their friends, and property, and the government, from the unlawful assaults and encroachments of all persons in times of exigency, where immediate appeal cannot be made to the laws, and relief afforded [D&C 134:11]

And I now move to another important subject.

Members of this Church, professional and otherwise, have a balancing act to perform. How much time and effort should be devoted and dedicated to one's temporal calling as against the responsibility to one's family and the Church? This depends in part on what make of car we wish to drive, how large a home we wish to live in, and how big of a bank account we wish to enjoy. In my life my family and my Church callings came first. We lived carefully, and



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I tried not to become obsessed with financial gain. These conflicting interests were accommodated and, as I told President Holland recently, if I had to do it over, I would do it the same way. Large overhead, new technology, I suppose, require shockingly high billings for legal services. This means that some deserving people will not be able to afford your services. One of your challenges will be to make the economic rewards your last consideration rather than the first.

President Henry D. Moyle of the First Presidency, who had been one of the more successful attorneys of this state, gave me some advice as I started to practice the law. He said, "Don't worry too much about the money. If you take care of your office, it will take care of you." More than once I had clients pay me more than I asked and billed. I like to think that I was more interested in them and in solving their problems than I was in their money. I really could not do otherwise in many cases because their little businesses they had struggled with, their homes, their futures, and their good names, were in my hands.

Young attorneys often feel that they must win all of their cases. I am afraid I once wished that I could have won them all, but it does not work out that way. Trying to win at all costs can be fatal in the long run. It will certainly ruin your career and irreparably damage your reputation. As you become more experienced as a counselor, you will learn that you do not have to win all your cases. Because of the law and facts, some cases just cannot be won, but a good defense in such cases can result in more justice. All you have to do is your best. If you are at ease with this philosophy, you will be more successful than if you operate under the theory that every case must be won.

Settling cases is a noble art. This is also an area where integrity can be lost through deception. Again I quote my friend Arthur Nielsen.

The attorney should at all times be honest, truthful, and not attempt to deceive the court on either the law or the facts or conceal that which should be disclosed. An attorney should also avoid deception when dealing with another attorney. Frequently, when negotiating with another attorney, one may be tempted to lie or conceal the truth. Although an attorney may be under no obligation to disclose facts to his opponent, he should not knowingly allow the other party to deal with him under the mistaken knowledge of what the facts are. Some attorneys have said that this is too much of an altruistic condition, but I feel

that you can always state your position and leave it up to the other party to identify his [or hers]—without 'educating' him [or her] as to what it ought to be. An attorney should avoid making any statement or refuse to make an answer unless he is prepared to state the truth. [Private letter]

There is a great risk in justifying what we do individually and professionally on the basis of what is "legal" rather than what is "right." In so doing, we put our very souls at risk. The philosophy that what is "legal" is also "right" will rob us of what is highest and best in our nature. What conduct is actually "legal" is, in many instances, way below the standards of a civilized society and light years below the teachings of the Christ. If you accept what is "legal" as your standard of personal or professional conduct, you will rob yourself of that which is truly noble in your personal dignity and worth. You can be just as tough as you want as an advocate, but you must never, never lower your own integrity. To do that, you have to keep in control of yourself, your emotions, and your feelings at all times, particularly in the heat of battle.

Judge David K. Winder of the United States District Court for Utah recently told some admittees to the bar:

The expedient or short-sighted lawyer who fails to fulfill verbal understandings with other lawyers, who presents dubious evidence, who deals loosely with the record, or who misleads judges, is quickly "pegged." In our bar and every bar there are certain lawyers who achieve the enviable and priceless status of a good name. That status is developed gradually by word of mouth, from judges in the privacy of their gatherings and from lawyers in theirs. And, unlike the litigation you will be handling, be aware that once the verdict of your professional peers is in there is no formal "due process," no rebuttal and no appeal from that verdict. [Judge David K. Winder, Utah State Bar Speech to Admittees for October 6, 1987]

How do you study or practice the laws of men in the light of the laws of God? You must keep your own soul; you must not give it away. You must not compromise; by all means you should not sell it. I wish to testify that the sponsoring institution of this law school is the Church of Jesus Christ. This is my testimony. I pray that the Lord will bless you in your studies and activities so that you may do good upon the earth and render service to your fellowmen. In the name of Jesus Christ, amen.

Letter from the Dean

With this issue of the *Clark Memorandum*, we welcome a much larger circle of readers—the expanding membership of the J. Reuben Clark Law Society, many of whom are not alumni of the BYU Law School.

Within the past year, the faculty and administration of the Law School have been talking at length with their alumni leaders and with leaders of the bar in various parts of the country about creating a national organization for lawyers who share an interest in BYU and an interest in the professional aspirations for which the name of J. Reuben Clark stands. The response to these conversations has been widespread, strong, and affirmative.

The events of last November brought together several elements in that response, suggesting what such an organization might look like: On November 16, 1987, in Washington, D.C., fifty alumni from the Law School were sworn in as members of the Supreme Court Bar (See story on p. 22) That same evening, these relatively young lawyers (all graduated since 1976, the year of the Law School's first graduating class) had dinner with more than 200 other Washington-area lawyers and their guests.

The dinner was planned by a committee composed of both Law School alumni and nonalumni attorneys interested in the Law School. In addition to featuring remarks by Rex Lee, the dinner honored the memory of the late Jim Reese, a relatively young attorney from northern Virginia whose life represented an exemplary balance of public service, professional achievement, and religious commitments.

I also announced at the dinner the creation of the Hugh W. Colton Professorship in Law (see story on p. 27), an endowment of several hundred thousand dollars made possible primarily by members of the Washington "prototype chapter" of the J. Reuben Clark Law Society. Moreover, one nonalumni lawyer who was present at the dinner but otherwise wishes to remain anonymous sent the Law School a \$50,000 contribution as the direct result of his participation in that day's activities.

This evening was so successful that a second annual Washington event was planned on October 14, 1988, with Elder Dallin H. Oaks as featured speaker. We announced the funding of a new professorship named for the late Robert W. Barker, a prominent Washington, D.C., lawyer and former president of the Washington, D.C., LDS temple.

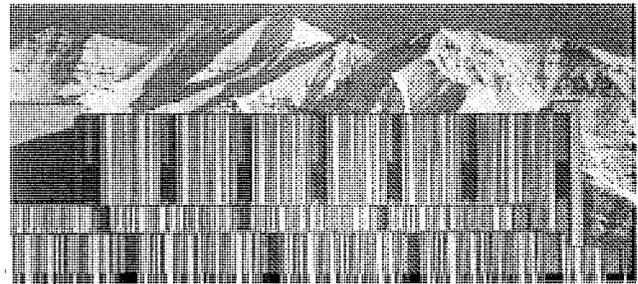
We will continue to have a national alumni organization, organized primarily around representatives within each graduating class, who will help plan class reunions every five years and sponsor other activities, such as the first annual alumni dinner in Salt Lake City on October 7, 1988. Our national alumni chair is Val Christensen, a partner in LeBoeuf, Lamb, Leiby & MacRae in Salt Lake.

In addition, Ralph Hardy, a partner in Washington's Dow, Lohnes & Albertson and a graduate of Boalt Hall, chaired the first Washington dinner and will now chair the National Board of the J. Reuben Clark Law Society. This board, made up of

both alumni and nonalumni lawyers, held its first meeting in Provo on October 7, 1988. We are already assembling the material needed to publish a national professional directory of Law Society members. Lawyers in various cities around the country are beginning to think about local chapters of the Society, which may conduct annual dinners and sponsor other local professional activities.

A thoughtful and tasteful publication is an important element in a high quality, professional, and nationwide organization of this kind. The *Clark Memorandum* seeks to fill that need. It will henceforth become the official publication of the J. Reuben Clark Law Society, and will be distributed to Society members two times a year. The *Memorandum* will continue to feature information about the Law School and the activities of faculty and alumni, but will also share stories and ideas of interest to all lawyers who share the professional and personal aspirations for which the Law School and the name of J. Reuben Clark stand. Two articles in this issue especially illustrate such material—published versions of memorable talks given to our law students over the past two years by Elder James E. Faust and Elder Dallin H. Oaks, members of the LDS Council of the Twelve Apostles.

I am genuinely enthusiastic about the creation of the Law Society. This immediate broadening of the Law School's base of friendly support (call it "instant alumni") offers a senior level of advice and financial reinforcement that compares favorably with the alumni organizations of the nation's oldest and finest law schools. We encourage nonalumni Society members to continue supporting the law schools from which they obtained their own degrees. But by means of their additional support, the Law School at BYU can seriously sustain its upward climb toward being one of America's most influential and respected schools of law. As it does so, I believe that increased stature will reflect favorably upon each member of the Law Society, including our own alumni.



One nonalumni lawyer put it this way: "Because my colleagues know I am a committed Mormon, my professional reputation and the reputation of the BYU Law School are deeply intertwined, whether either of us likes it or not."

Further, and of equal significance, the Law Society will create a vehicle for communication and interaction among a group of lawyers who, like J. Reuben Clark himself, seek in their professional attitudes and in their personal lives to serve others through the grand profession of law. We need mutual reinforcement for those aspirations these days—I think the J. Reuben Clark Law Society will help provide it.

More information about membership in the Society will be forthcoming soon. —Bruce C. Hafen