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C O U R T R O O M

W I T H A V I E W

# ONE OF THE GREATEST

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## OPPORTUNITIES A LAW SCHOOL

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### GRADUATE CAN HAVE IS THE CHANCE TO SERVE

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as a clerk for a United States Supreme Court justice. Although a clerkship in any court—federal or state, appellate or trial—is a powerful learning experience, a perspective on judicial decision making sharpened at the Supreme Court level cannot be compared. “Clerkships of all kinds . . . expose young lawyers to challenging legal problems and provide a window into our legal system that can be obtained in no other way,” says David Campbell, visiting professor at the BYU Law School. “[But] as a federal clerk,” he adds, “you get to see the world from the mountaintop.”

#### JUDGED AN HONOR

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Just like the few who make it to the highest summit, a Supreme Court clerk enjoys an opportunity that is not only great but also rare. The competition is plenty tough for the few clerkship slots at the top of our judicial system. The honor is defined by the statistics: approximately 40,000 students will graduate from American law schools each year; only about 25 to 30 of them will obtain clerkships at the Supreme Court level.

Yet since its first graduating class in 1976, the J. Reuben Clark Law School has produced nine graduates who have earned the distinction of being selected to serve as a judicial clerk for the high Court. This number places the Law School in the small percentage of law schools who can boast such a high representation. “The overwhelming number of Supreme Court clerks have come from a few of the nation’s elite law schools,” notes Douglas Floyd, law professor and member of the faculty judicial-clerkship committee. “The achievement of nine BYU graduates in attaining these positions has been quite

remarkable, given the relatively recent founding of the BYU Law School.”

No one knows better how difficult it is to be chosen for the honor than those who have been. “It’s so hard to get one,” says Jay Jorgensen, who will start his clerkship this fall. “I was so surprised when Chief Justice Rehnquist’s secretary called. I was flabbergasted.” Steve Sargent, who five years ago also clerked for the chief justice, recalls, “I just assumed that ‘no news was bad news’ when I hadn’t received any word from Chief Justice Rehnquist. Then when his secretary called and told me I had been selected, I couldn’t believe it.”

Several of the JRCLS Supreme Court clerks testify that—aside from being qualified to compete—it was just chance that got them the position. As Von Keetch thinks back on his 1989 Term in the courtroom of Justice Antonin Scalia and Chief Justice Warren E. Burger, he admits,

*One factor above any other that applies to the selection process is pure luck. That’s not to say that qualifications aren’t important. To the contrary, applying from a law school other than Harvard, Yale, Chicago, or Stanford, it is almost a prerequisite that one finish in the top one or two in his or her class. . . . But as I looked over the résumés of those who applied for clerkships while I was at the Court, I literally found hundreds of applicants who had those qualifications. [Much] is just a product of darn good luck.*

Even the Law School’s first Supreme Court clerk, Monte Stewart, responds to the question of selection criteria with a pause followed by a common conclusion: “Luck?”

But, as Keetch points out and as every law student knows, it takes *more* than luck to become a Supreme Court clerk. The qualifications are the highest: a lofty class

rank, law review editorial experience, a clerkship with perhaps a “feeder” federal appellate court, and, hopefully, some legal practice. The competition is the stiffest: the best law students from the most prestigious law schools. “Other clerks had graduated at the top of their classes from Harvard, Yale, and Stanford. . . . There is a certain mystique about the legal education at these schools,” says Keetch. When Stewart showed up for his clerkship, he greeted two Harvard grads and a southerner from the University of Virginia. “I was the Mormon from Las Vegas,” he relates.

Though most of the clerks confess they were a bit nervous during their first few summer days in Washington, they quickly put things in perspective. “When I first arrived at the Court, I must admit to having felt extremely intimidated,” says Keetch.

*I feared that it would be obvious just how far behind I was. The other clerks, however, couldn't have been better. From the start they treated me as an equal. During the time I was at the Court, I never felt from them a sense of superiority, nor did I see any other indication that they were “looking down their noses” at a BYU graduate. They knew and respected Rex Lee and other professors at BYU, and more than anything else, they repeated their amazement at my having received an excellent legal education without having to incur the large debt that they all carried.*

Stewart agrees. “I felt that the liberal education I got here was as good as the education that any of the other Supreme Court clerks had received,” he says. “I basically had access to the same cases and casebooks and the same law review articles. And my teachers in my estimation were as good as those these other clerks had had, although my teachers probably were not as well known nationally. There’s no question in my mind . . . that in some cases they were better than the more-famous teachers found at other prominent law schools.”

Michael Mosman, who clerked for Justice Lewis F. Powell, Jr., during the 1985–86 Term, also felt well prepared for his clerkship by his law training at the Law School, “particularly Woody Deem’s criminal law and procedure classes and Doug

## Monte N. Stewart, '76

When Rex Lee and Bruce Hafen were scouting for outstanding individuals they wanted at BYU’s new law school, people who would inspire others to come, they looked to Monte Stewart to boost their student recruitment. “Stewart’s decision to join the charter law class at BYU influenced a number of his classmates to do the same,” notes Carl Hawkins. When it came time after his graduation from law school for Stewart to

### MORE THAN LUCK

seek a judicial clerkship in the Supreme Court, the leaders of the Law School remembered Stewart, who recalls, “A lot of people supported me, and Rex, obviously, was at the center of that.”

Another person who spoke highly of Stewart was Judge J. Clifford Wallace of the Ninth Circuit Court of Appeals in San Diego, for whom Stewart clerked after his graduation from law school. When Chief Justice Warren Burger

called on the judge to see what kind of clerk Stewart had been, Wallace “went to bat” for the young lawyer. Two weeks later, Stewart learned he had been selected for a Supreme Court clerkship.

Stewart began his clerkship with Chief Justice Burger the summer of 1977. “I was of the view then—and still am,” Stewart says, “that there were many clerks with a whole lot more candlepower than I had, but I believe I had enough candlepower that I felt that I did well as a law clerk. I know that Chief Justice Burger was pleased with my performance.” Likewise, Stewart took a good view of the chief justice. “I was impressed with Chief Justice Burger’s wisdom and instincts,” he says. “I



gained an appreciation for the sincerity of the justices in striving to do the right thing and make the right decision in very difficult and challenging cases.”

When his year at the Supreme Court was up, Stewart returned to San Diego to practice with Gibson, Dunn & Grutcher, the law firm that had originally hired him out of law school. Two and a half years later he moved with his growing family to his hometown of Las Vegas to join his uncle’s firm, Heaton & Wright. When his uncle died in October of 1982, Stewart formed his own firm—Wright, Shinehouse & Stewart—a successful civil practice for which he worked for more than 10 years.

But in 1991 Stewart shifted gears, accepting an appointment to serve as a United States attorney in Nevada for 18 months. Then in June 1995 he interrupted his law career to serve as mission president in the Georgia Atlanta Mission for three years.

Stewart and his wife, Ann, eventually moved their family, which includes seven sons and three daughters (in that order), to Provo. Now on the Law School’s faculty, he serves as director of the Advocacy Program, focusing on the legal research, analysis, writing, and oral advocacy skills of first-year law students. Stewart remains of counsel to his previous employer, the Provo law firm Fillmore, Belliston & Israelsen.

## Eric G. Andersen, '77

Fasting, prayer, and the advice of friends and mentors helped Eric Andersen make “the better choice . . . between studying law and pursuing a PhD in history.” Prompted particularly by then Law School professor Bruce Hafen, Andersen says, “I was intrigued by the adventure of being in the second class of the new law school at BYU and, after considering enrolling at a few other fine schools, felt that BYU was where I belonged.”

The road that led Andersen to a judicial clerkship with Justice Lewis F. Powell, Jr., in 1978 and a satisfying career has been paved with high opinions of the young lawyer. Not only Hafen but also then BYU President Dallin H. Oaks brought Andersen to the attention of Justice Powell. And his clerkship with Powell, Andersen claims, was “the single most important thing for getting a job teaching.”

Following his graduation from law school, Andersen and his wife, Catherine (Hardy), a member of the Law School’s charter class, whom he had married right after her graduation, moved to San Diego, California, for a clerkship with Judge J. Clifford Wallace of the United States Court of Appeals for the Ninth Circuit. The next year they moved to Washington, D.C., to clerk for Justice Powell.

### FREE AGENT

“Other law-related experiences—both in practice and teaching—have been of great value,”

Andersen says, “but the concentration of learning was greater during the Supreme Court clerkship than at any other time in my professional life.”

Immediately after his clerkship Andersen spent a year working in the Washington, D.C., office of Vinson & Elkins, a Houston-based firm. When the firm had an opening in its London office, Andersen and his wife moved to England, where they lived for the next four years.

In 1984 Andersen left London to accept a teaching position on the faculty at the University of Iowa College of Law in Iowa City. “After a while we knew we’d have to make the jump sometime from practice to teaching, so we couldn’t get too used to the lifestyle and salary of practicing.” He has been on the faculty ever since and is currently devoting half of his university time as associate academic dean of the law school.

With two of their children in college (one at BYU, the other at BYU—Hawaii) and the third in junior high school, Andersen and his wife are finding a *little more* time for themselves. Yet even their getaway of driving four hours to the Chicago Illinois Temple is within the context of responsibilities shaped by the Church. Andersen admits that his life’s choices may seem “boring” in comparison to those who live a bit closer to the edge, but that’s the way he likes it.





Floyd's class on federal courts." He relates, "I went to 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 didn't feel shorted."

Denise Lindberg, who clerked for Justice Sandra Day O'Connor during the 1990–91 Term, agrees that she felt just as prepared as clerks from the Ivy League schools but adds that she and other clerks from "second-tier" schools felt "more keenly the need to prove [them]selves as individuals and as representatives of [their] schools."

Though all nine Law School grads felt they had the "right stuff" for their clerkships, they admitted it helped to have someone help them get their foot in the door of the courtroom. Keetch concurs that "the strongest factor over which the applicant has some control is references." When choosing clerks, "justices rely a great deal on those whom they know and respect throughout the legal community of lawyers, judges, and educators." He finds that it helps to find someone such as "a former clerk, a professor, or a judge who knows one or more of the justices and to cultivate a sterling recommendation from that person."

Perhaps the best-known advocate for law grads was Rex E. Lee, founding dean of the Law School and president of Brigham Young University prior to his death in 1996. It is no coincidence that Lee also served a Supreme Court clerkship (for Justice Byron White) after graduating first in his class from the University of Chicago Law School in 1963. Well known for personally recruiting a strong group of law faculty and students at the Law School's inception, Rex Lee saw to it that this strength would carry on after, and far beyond, those first commencement exercises. Through his own reputation and power to persuade, Lee—who during his life argued nearly 60 cases before the

Supreme Court—literally opened doors for promising young lawyers.

Eight of the nine BYU law grads point to Lee as a key factor in obtaining their Supreme Court clerkships. Jorgensen, the ninth and most recent clerk, was recommended for his 1999 clerkship by several Law School professors but still recognizes the impact of Lee. "Part of the reason I chose to attend the J. Reuben Clark Law School," he says, "is a professor I knew at the Law School—Rex Lee."

Like the other clerks, Jorgensen can thank many of his Law School professors for their support. Richard Wilkins, Gerald Williams, and Kevin Worthen sent

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recommendations to the justices in his behalf, although Jorgensen is sure that as they were writing letters to the justices, "they were thinking I didn't have a chance." Karl Tilleman, who served for the retired Chief Justice Warren E. Burger and for Justice Clarence Thomas during the 1992 Term, recalls that Tim Flanigan and Rex Lee were influential in his securing a Supreme Court clerkship.

Eric Andersen, a clerk for Justice Powell during the 1978–79 Term, credits a BYU president for his opportunity. "The 'qualification' that made the difference was the outstanding support I received from faculty and administrators, including then BYU president Dallin H. Oaks (who had ties with Powell). . . . I owe them an enormous debt."

Besides professors and administrators, judges have a strong influence on the selection of Supreme Court clerks. Andersen notes that "part of the reason he received the clerkship was Justice 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."

With a similar appreciation, Stewart says that Chief Justice Burger broadened his field of vision when looking for good clerks. "He was not an elitist, evidenced by the fact that he took as a law clerk someone who was from a brand-new law school. It was not uncommon for him to take law clerks from the less well known law schools, whereas some of the justices tended to hire their law clerks from only a handful of four or five of the most prestigious law schools in the country." Stewart also notes that Justice Powell—though he had declined him a clerkship—"told the chief some very favorable things about me" and that Judge Wallace, for whom Stewart had previously clerked, also "went to bat for me."

Sargent credits a recommendation from Judge Deanell Reece Tacha of the Tenth Circuit, for whom he had clerked in 1993, in getting him a clerk position with Chief Justice Rehnquist the following year.

Mosman recounts that he "had three main qualifications: (1) Judge Malcolm Wilkey recommended me, (2) Judge Malcolm Wilkey recommended me, and (3) Judge Malcolm Wilkey recommended me."

#### OPENING EYES

The true value of a clerkship lies not so much in the honor of the position but in how it will enlighten the lawyer in becoming a better person. When he contemplated a judicial clerkship, David Campbell asked himself, "Will this be a valuable way to spend my time?"—a far

superior question, he believed, than “Will this experience be a stepping-stone in my career?” or even “Will I be a better lawyer for having had this experience?” (The value of a Supreme Court clerkship is certainly not found in any immediate financial rewards. Clerks are paid less than a new associate at a law firm—about \$38,600 for an average starting salary, compared to \$110,000-plus at a firm.)

Once a judge has chosen a law graduate for his clerk, he will greatly define the value of that clerk’s experience. Elder Dallin H. Oaks, a former justice of the Utah Supreme Court, stated: “The most important thing in dictating the quality of a clerkship is not whether the court is state or federal but the quality of the judge and the way he or she uses law clerks.” Once a judge has opened the door for a young lawyer, he can help open their eyes to the value of the law and to their potential to use the law for the benefit of the human race and the world it touches.

The nine Law School clerks agree. Von Keetch says, “Justice Scalia taught me to question everything. . . . Case law and precedent . . . are only as strong as the reasoning upon which they are based. . . . Despite a résumé that contains the highest honors that the legal profession can bestow, he was always searching for new viewpoints and concepts that could be utilized to get the very best out of the law. [He taught me that] we do not exist as servants to the law; the law exists as a servant to us.”

#### JUDGE AS LAW MENTOR

As a member of a select group comprising a chief justice and eight associate justices, a Supreme Court judge is in charge of reviewing 140 to 150 cases a term—the hardest cases, those that could not be settled in lower courts. The highest of appellate courts sees lawsuits that have already been through much debate and judgment and that are making their final appeal before some of the most discriminating minds in the nation.

As an expert in discernment, a Supreme Court judge functions as a mentor to the clerk who wants to learn the law and then apply it wisely to individual situations. Those serving clerkships find that the judge serves as a model for decision making. They also come to realize that the judge is *where* he is because of this ability.

As a law review article by Rex Lee and Richard Wilkins states: “The judge has the ancient task of settling disputes between specific individuals, groups, or institutions. [A] judge must interpret the laws passed by the legislature and the regulations issued by executive agencies and monitor the conduct of government agen-

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cies, public institutions, and even private individuals and groups in light of the Constitution.” To this purpose Denise Lindberg adds, “Justice O’Connor taught me the importance of having thought through the issues carefully—not just in the present context but in thinking about the ramifications of a proposed decision in other contexts.”

“The quality of a judge refers largely to the quality of the judge’s decisions,” notes Judge Larry M. Boyle, former member of the Idaho Supreme Court and present U.S. magistrate judge for Idaho. “The ‘correctness’ of the decision is only one consideration because many judicial decisions involve issues that could be decided in

several different ways. As a result, attributes such as whether the judge is scholarly in his or her approach to the law as well as fair, impartial, unbiased, thoughtful, and wise in properly assessing the conflicting legal, equitable, and policy considerations at issue in a case are at the heart of assessing the quality of a judge’s decisions and the value of a clerkship with that judge.” The clerks all concur that the quality of their judge’s decisions was high and, consequently, was one of the main rewards of their experience.

Rex Lee quoted Leon Friedman to express his view that “Justice White ‘approaches each case without preconceived ideas and with a desire to examine the individual problem in that case rather than deducting the result from set principles. His approach . . . makes for greater justice in the cases coming before our highest Court.’” Kevin Worthen sees in White a “thirst for knowledge and a great capacity to assimilate and analyze information.” In a law review tribute to the chief justice, he quotes one of White’s former law partners referring to the man as “the only lawyer he ever knew who physically attacked a library” and another describing him as “a fierce worker who advanced on a problem, shredded it, and put it together again.”

Though they saw at the time that their research, writing, and debating had some impact on the judge’s decisions, the clerks knew that, as Von Keetch says, “the justices—and the justices alone—made the ultimate decision on how a case would be decided.” He relates, “Justice Scalia’s writings are truly Justice Scalia’s writings. . . . He would always take whatever rough draft he received, improve upon it dramatically, and, through additional arguments and reasoning, make it his own.”

Other clerks agree with Keetch. Monte Stewart says, “In my experience Chief Justice Burger knew how he wanted to rule on all the court matters, [though] the chief’s law clerks had the responsibility to make a statement of the judge’s view.” Eric Andersen relates that “Justice Powell . . .

## Kevin J. Worthen, '82



STILL ENJOYING THE VIEW

As Kevin Worthen looks out the window of his fifth-floor office in the Law School building at BYU, he sees more than mountains: he enjoys a clear vision of the power and potential of the law. In his role of law professor, he hopes to clarify that vision to new generations of lawyers. "I want every law student to gain a thorough understanding of how the law develops from and impacts the society in which we live," Worthen says. "Such an understanding inevitably generates passionate enthusiasm for participation in the legal process and a keen appreciation of the enormous responsibility that accompanies that participation. It is what makes a life in the law so rewarding and so challenging."

Perhaps the main thing that convinced Worthen that he wanted to teach law rather than practice it was his clerkship with Justice Byron White during the 1983–84 Term. "I found that I enjoyed discussing and debating the law and what it can and should do. After my clerkship I could continue to approach law this way through teaching."

In addition to his desire to teach law, Worthen developed a particular interest in Indian law during his Supreme Court clerkship, a period of time when several Indian lawsuits reached the high Court. Previously at the Law School he had taken an Indian law course and found the field "sort of an uncharted area of law . . . with few court decisions, [yet one] about Constitutional issues." Following his clerkship he headed southwest to Phoenix, where the practice of Indian and environmental law flourishes. There he became an associate in the natural resources department of the Jennings, Stouss & Salmon firm, where he split his time three ways between Indian law, appellate courts, and environmental law.

Worthen's desire to teach, however, drew him back to BYU, where he joined the Law School faculty in 1987. He often draws from his experience clerking for Judge Malcolm R. Wilkey of the United States Court of Appeals for the D. C. Circuit, as well as from his clerkship with Justice White—not only as a teacher but also as a judicial clerkship coordinator for the Law School. He is a strong advocate of the clerkship experience and the opportunity it offers to "take part in an invaluable mentoring process" with a judge. He asserts, "Students can't get that kind of insight anywhere else."

Worthen, who went to the College of Eastern Utah in Price, "just a few blocks from [his] home," before coming to BYU for undergraduate and law degrees, has an older brother, Clyde, who is also a graduate of the J. Reuben Clark Law School. Worthen and his wife, Peggy, wonder if any of their three children—Collin, 13; Aaron, 11; or Kaylee, 7—will someday be enjoying the same view from that Law School window.



## Michael Mosman, '84

**A** look at Michael Mosman's pedigree might lead one to think that he lives and breathes the law. His father and two brothers practice law together in Moscow, Idaho. His great-grandfather was a lawyer in Virginia until he left to become the only lawyer in Cul-de-Sac, Idaho. Even Mosman's brother-in-law is in law. But those acquainted with Mosman and his sense of humor and zest for things nonlegal know that he frequently comes up for fresh air.

Before serving a clerkship with Justice Lewis F. Powell, Jr., during the 1985 Term, Mosman cruised through his undergraduate years at Ricks College and Utah State University, then looked at BYU's Law School. "I did not plan my education or my career—which explains why I went to law school," he says. "I chose the J. Reuben Clark Law School for three reasons: (1) I thought my education would be a unique blend of legal training and gospel influence, (2) I was offered a scholarship, and (3) I wanted to live in the Mountain West for as much of my life as possible."

### AIR APPARENT

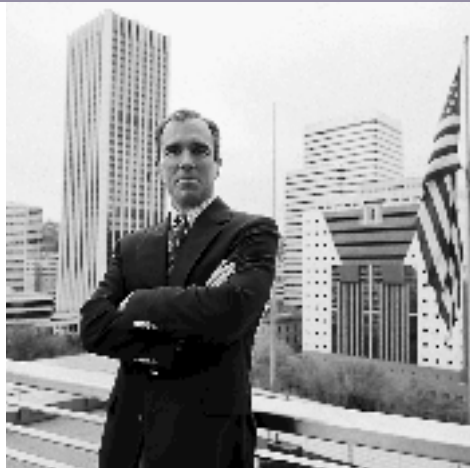
Mosman did well enough in law school to obtain a clerkship with Judge Malcolm Wilkey of the U.S. Court of Appeals for the D.C. Circuit, a stint that helped him into Justice Powell's chambers. About his chance to work for the Supreme Court, he recalls, "I was nervous at first, partly from the many changes—moving, the birth of our third child—that occurred within weeks of starting my D.C. clerkship. By the time I started the clerkship, I felt confident.

"I evaluated petitions for certiorari, wrote bench memos, drafted opinions, dealt with urgent death penalty filings, and played basketball in the highest 'court' in the land," he says. "Justice Powell was a southern gentleman. He taught me that you could be a very successful lawyer and still maintain high standards of conduct." Mosman found that the most satisfying aspect of his clerkship was having "the ability to exercise some positive influence on important issues."

Following the Powell clerkship, Mosman "wanted most to go to the smallest city that had a good legal system" and consequently left Washington, D.C., the summer of 1986 for Portland, Oregon. "I spent the next two years as an associate at Miller, Nash, Wiener, Hager & Carlsen," he relates about the law firm—which emphasizes work for timber companies, import and export in the Pacific Rim, and political work in the Portland area. "I tried several cases (mostly pro bono) and learned a lot from talented lawyers," he adds. "Contrary to a common perception, I enjoyed these two years very much."

"My family grew from three children to five, 18½ years apart; my oldest is a freshman at BYU, my youngest, 1½ years old. On a given day in June in Portland, if you drove quickly, you could ski on Mt. Hood, windsurf the Columbia, water ski on the Willamette, golf at Pumpkin Ridge, nap on the beach, and then go deep-sea fishing. We love it here."

Mosman left Miller, Nash in October 1998 to become a federal prosecutor—"the finest legal job in America," he affirms—and is currently an assistant United States attorney, still living in Portland.



usually reached a decision without a lot of discussion with his clerks. . . . The clerks had some influence in the details of the opinion, [but] Justice Powell reviewed every word carefully and invariably made changes in what we proposed."

Worthen knows that with Justice White "there was rarely any doubt about who would make the final decision." He remembers "Justice White's oft-repeated statement that the clerks were 'rarely in doubt and often in error,' whereas the justices 'were often in doubt and rarely in error.'" He adds, "Although Justice White would occasionally refer to his clerks as 'the big brains,' there was little question as to who the big brain really was. . . . As one former clerk observed, 'You have to remember, he's three steps ahead of everybody else.'"

### JUDGE AS LIFE MENTOR

In addition to "the wonderful quality of law practiced at the highest level," remarks Monte Stewart, "I appreciated the goodness and the humanity of all nine of the justices and their intent, their effort, to do right in every case. I was impressed with Chief Justice Burger's wisdom and instincts. . . . He was very good and kind, . . . very genuine." Karl Tilleman echoes Stewart's sentiments: "I learned a great deal about the law during my clerkships, but, more important, I learned of integrity and honor."

From the first to the most recent Law School graduate serving a Supreme Court clerkship, words describing impressions of the judge as a person expose a layer of the experience that underlies a clerkship's ultimate worth. One of the elements that bind judge and clerk as they sort through the intricacies of the law is the benevolence revealed during that struggle.

Michael Mosman tells a story about Justice Powell, "a southern gentleman who taught me that you could be a very successful lawyer and still maintain high standards of conduct":

*We had more capital punishment cases that term by far than any since 1976. During the time 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.*

Eric Andersen, another Powell clerk, agreed that the justice “took a personal interest in his clerks.” Andersen remembers, “He took the time to become acquainted with our families and was concerned for their well-being.”

Karl Tilleman, who served as the clerk for the retired Chief Justice Burger, relates, “I worked very closely with him, traveling a lot. . . . I found that after he got to know you and trust you that a personal relationship developed that was very warm and extremely rewarding.”

In their role as a human being, says Kevin Worthen, a judge is “a true mentor. Most judges treat their clerks almost like their children—taking time to help them understand what is going on, pointing out ways in which they can improve. . . . This mentoring relationship continues, and even deepens in some cases, after the clerkship ends. . . . I heard one of his former clerks refer to the judge as his ‘father-in-law.’”

In his own relationship with Justice White, Worthen discovered to his delight that “the impact was not solely on the intellectual process.” Such experiences as “dinner at the Whites’ home, field trips to buildings in Washington, D.C., and basketball games . . . created a bond [that] goes much deeper than that of intellectual mentor and pupil. . . . Although reserved in demeanor, the justice managed to convey to his clerks the genuine warmth he felt for them.”

Worthen also describes White as a “man who defined the experience by the force of his personality,” one who taught and showed his respect for you through toughness. The justice’s teaching style is illustrated by one of Worthen’s many stories about Byron White:

## Von G. Keetch, '87

From his youngest days in Pleasant Grove, Utah, Von Keetch had hoped for the opportunity to attend Brigham Young University for his undergraduate degree. While his hopes were being fulfilled, he became very familiar with the J. Reuben Clark Law School. Even though Keetch had law school opportunities from “a number of so-called ‘top echelon’ law schools,” he chose BYU.

“By far the most influential factor in my decision was the faculty,” Keetch says. “As the time came to make my law school decision, I had significant exposure to such nationally known BYU professors and administrators as Rex

### RED, WHITE, AND COUGAR BLUE

Lee, Bruce Hafen, Carl Hawkins, and others. Put very simply, I wanted to learn the law from these individuals. More than anything else, they were the reason I decided to stay at BYU for law school.”

These individuals not only impressed Keetch, they also helped him become a Supreme Court judicial clerk. In July 1989, immediately following a clerkship with Judge George C. Pratt on the United States Court of Appeals for the Second Circuit in New York City, Keetch began a year with Justice Antonin Scalia. He particularly remembers the “long afternoon[s] of discussion and debate focus[ing] on all of the cases that had been argued that week. These

discussions were always fascinating; rarely did all of the clerks agree on a particular outcome. Opinions were often strongly held, and sometimes the discussion was lively.”

During the Term, Keetch also worked several hours per week for retired Chief Justice Warren Burger. “Because the chief was retired, he did not engage in any court work. My duties for him included writing speeches, assisting him with his writing, and participating in numerous activities commemorating the Bicentennial of the Constitution.”

Immediately after his clerkship Keetch accepted a position with the Salt Lake City law

firm of Kirton & McConkie. “In my practice,” he says, “I spend a great deal of my time providing advice to [the Church] in the areas of constitutional, religious, and appellate law. When time permits and when I truly find a case of interest, I also greatly enjoy filing petitions for certiorari or filing an amicus brief on behalf of interested parties.”

“An avid basketball player and fan,” Keetch finds relaxation in sports and spending time with his wife, Bernice, and their five children at home in Highland, Utah. “From time to time,” he says, “I serve as an adjunct professor at the J. Reuben Clark Law School, where I have taught first amendment law and a seminar on the United States Supreme Court.”



## Denise Posse-Blanco Lindberg, '88

While Denise Lindberg was serving as a judicial clerk for Justice Sandra Day O'Connor in 1990, she noticed a pillow in the justice's chambers embroidered with the words "Maybe in error, but never in doubt." Eight years later, on the day Lindberg was sworn in as a trial judge for the Third District in Utah, her daughter-in-law gave her a pillow with the same saying. She says, "I keep it in my chambers as a daily reminder of Justice O'Connor and of the need to be true to my own voice."

As the first woman from BYU's Law School to serve as a Supreme Court clerk, as the school's first clerk with a minority background, and as the first BYU clerk to serve Justice O'Connor, Lindberg could point to herself as being unique. But before she ever went to law school she stood out from the crowd.

The story of her life before and after coming to the United States as a Cuban immigrant partially explains her drive. Lindberg was born into a life of privilege in Havana, where she attended private schools until Fidel Castro's oppressive regime forced her family to flee the country. Stripped of their wealth, the Posse-Blanco family settled in New Rochelle, New York. Education became Lindberg's refuge. "One of the few things I did well was school," she says. "It was a place where I found I could control the outcome."

And well she did: Converted to the Church while in high school, Lindberg earned a bachelor's degree at BYU, then completed two master's degrees and a PhD at the University of Utah. Thinking her "days of formal schooling were over," she discovered after talking with BYU law professor Eugene Jacobs—who said she was "ornery enough that [she]'d probably make a good lawyer"—that she was wrong. Within three weeks she was accepted to BYU's Law School and awarded a full scholarship.

Lindberg graduated second in her law class before serving a one-year clerkship with the Honorable Monroe G. McKay of the United States Court of Appeals of the Tenth Circuit in Salt Lake City. This background, plus "Rex Lee's recommendation," led her to the clerkship with Justice O'Connor. Having lived in Washington, D.C., for some time, first as an associate attorney with the D.C. office of Sidley & Austin (Lee's law firm), then as a clerk for the Supreme Court, Lindberg and her husband decided to remain in the D.C. area so that the youngest of their two sons could finish high school there. She practiced for three years with Hogan & Hartson before the Lindbergs moved back to Salt Lake City, where she worked as general counsel for Aetna Life Insurance Co. and then was recently appointed as a judge.

Lindberg's husband "wanted to get in on the act" and graduated from BYU's Law School two years after his wife. He now practices as a land-use attorney in Draper, Utah. Lindberg, who looks forward to being a grandmother twice this year, says, "Our youngest son also anticipates a career in the law."



HER OWN ROBE

*On one occasion early in the Term, I wrote a bench memo noting that the briefs of one party had not adequately responded to what I thought was the determinative argument. Several days after I had turned in the memo, but before conference on the case, the justice and I were discussing the case. When I raised what for me was the dispositive argument, the justice countered in quite a loud voice, "Don't you think [the party opposing the argument] rebutted that argument in the brief?" I said, somewhat hesitantly, "No." Then even more challengingly he said, "You really don't think they did?" I said, somewhat more assertively, "No." He then smiled and said, "I guess you're right."*

Worthen explains, "The challenge came not because Justice White wanted to unnerve me but because he wanted to make sure I had thought deeply enough about my position to be confident of it."

The respect between justice and clerk was apparently mutual during Worthen's term at the Supreme Court. White's clerks were in awe of the man, who has been described as being "as close to a true Renaissance person as our modern complex times will allow." Not only was he a capable judge but he was an All-American and professional football player. And as difficult as their workload was, notes Worthen, "it was hard [for the clerks] to complain about too much work to a justice who even in his 70s arrived at work at 7:00 a.m. and who regularly frequented chambers on weekends. . . . One former clerk observed, 'I tried beating [Justice White] into work in the morning, but I finally figured it was like trying to open the refrigerator door . . . before the light comes on. It can't be done.'"

But Justice White "valued competition not because it gave him a chance to show off his magnificent abilities," Worthen reemphasizes, "but because it was a way of bringing out the best in those who competed." And the clerks enjoyed having their best brought out: "Clerking for Justice White was a thrilling and wonderful exercise in combat, from intellectual to

basketball," said one White clerk. "Every day was like the Athenian youth going with Socrates, and Socrates won 38 to 0 on a daily basis."

Chief Justice William H. Rehnquist impressed Steve Sargent as "a tremendous teacher. He was also a great man with a wonderful sense of humor." Sargent says, "He taught me much about how to work out a compromise and about how to make your views known without being offensive or didactic."

Though he has yet to clerk for the man, Jay Jorgensen has also gotten a sense of what Chief Justice Rehnquist is like. In his interview with the chief justice, he was

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surprised to learn that not only had Rehnquist heard of the small rural town of Roosevelt, Utah, where he grew up, but as a young man Rehnquist hiked across the country and slept on the Vernal courthouse lawn. "I was surprised how gracious and down-to-earth Rehnquist was in our interview," Jorgensen says.

#### LIFE IN THE FAST LANE

Life at Court is illuminating, but the sources of that enlightenment can come at law clerks from all directions, and they soon discover that they have to keep their eyes wide open. A daily menu of researching, writing, and recommending offers

them a full plate of work. Kevin Worthen feels that some of the writing assignments, such as draft opinions, are "more interesting and 'prestigious' than others. Work on draft opinions, after all, might actually be published in a somewhat recognizable form for the world to see. Bench memos, on the other hand, are generally read only by the justice and then relegated to the case file, never again to see the light of day."

Clerks have to keep reminding themselves of all the skills they are honing as they wear out the clock and themselves. Dissents from denial, where the clerk "had to read the cases themselves and certify whether the conflict was real," recalls Worthen, were "an often unanticipated addition to the voluminous work for which the clerk was already responsible." Michael Mosman admits that the work was exhaustive; he would arrive at the judge's chambers about 6 a.m. so he could leave early enough to spend some of the evening with his family.

Knowing that there is method to this madness helps make all the work palatable to the clerks. Worthen learned that though the judge ultimately made his own decision in a case, he "wanted to hear all that the clerks had to say. Clerks were used as sounding boards to make sure that the justice fully considered all possible arguments and points of view.

. . . One former clerk observed that Justice White "[w]asn't invested in an argument; [if] you could hit him back with a chair, intellectually speaking, he could be convinced."

"[This] role of sounding board or debate opponent was for many the most gratifying aspect of their clerkships," says Worthen. "To be able to engage in free-flowing debate on important legal issues—knowing that the justice really wanted to know what you thought, not what you thought he thought—was an unforgettable and, for many White clerks, a never-again-to-be-paralleled experience.

"At times this leeway in drafting opinions and expressing views about a case



## Karl Tilleman, '90

Karl Tilleman's first shot at being a professional was not in a court of law—it was on a basketball court. Once told he was the first “Canadian Olympic athlete” to clerk at the Supreme Court, Tilleman views his career move as circumstantial. He explains the rebound:

*I became an attorney because the night I proposed to my wife, Holly, my father-in-law told me that I should think about my future and how I would support a family. He told me that he believed I should be some type of “professional.” Having failed at being a professional basketball player and wanting badly to marry Holly, I decided I would be an attorney. He approved, and I proceeded to prepare for law school.*

The Calgary, Alberta, native did well enough at BYU's Law School to win the support of his professors in obtaining clerkships with retired Chief Justice Warren E. Burger and Justice Clarence Thomas. “Frankly, I found my initial days at the Supreme Court to be somewhat intimidating,” Tilleman admits. “Four years earlier I was playing basketball in Canada. At first I had to wonder what I was doing clerking at the Supreme Court of the United States. I also found my coclerks to be extremely bright and competent. I felt after several weeks, however, that I was able to do my job as well as the other clerks.”

Tilleman says that “being able to analyze complex legal issues quickly and then write effectively about those issues” were his greatest qualifications for the Court clerkship, skills he learned not only in law school but also during a clerkship with the Honorable John T. Noonan, Jr., Ninth Circuit Court of Appeals, in 1990–91. While in Noonan's chambers he “researched issues, prepared bench memorandum concerning pending cases, debated issues with other clerks in the chambers, and assisted the judge”—experience he would need at the court of Justice Thomas two years later.

Before joining four other clerks in Justice Thomas' chambers, Tilleman served as the clerk of the retired Chief Justice Burger. “I assisted him with a variety of duties in his capacity as the retired chief justice, including . . . writing speeches, a book, and several articles,” he says. And, Tilleman adds, although the chief justice “was known for observing a lot of formalities,” he got to know him personally as he worked and traveled with him. “Both my wife and I felt very close to the justice and his wife.”

Following his Supreme Court clerkship, Tilleman went into private practice with Jones, Day, Reavis and Pogue in Washington, D.C., working alongside Timothy Flanigan, a former clerk of Chief Justice Burger and a BYU graduate. Three years later Tilleman left for Phoenix, Arizona, where he continues to work for the law firm Dalton, Gotto, Samson, and Kilgard.

Though Tilleman became an attorney, he “also married Holly,” he points out, which “has been worth it all.” When he is not spending time with his wife and four children, Tilleman finds relief from his law work “by being a bishop, which helps keep everything in perspective.”



could be heady for the clerks,” adds Worthen. “As clerks worked on draft opinions, they could entertain thoughts of shaping the course of the law, of penning words that would live on in Supreme Court decisions to be studied with awe by succeeding generations. But the euphoric dreams were generally short-lived—terminated with the return of the draft bleeding with red ink from the justice's pen.”

One of the satisfying things about working at the Supreme Court level is, as Jim Gordon writes in *The Judicial Clerkship Job Hunt Book*, “You do not represent a particular client, and you influence the decision-making process in important ways [as you work] with the judge and the other clerks.” David Campbell adds, “For one year you get to question what is right or wrong in particular cases. From then on in the practice, the right answer will be your client's answer unless you become a judge. So there is an objectivity you get to bring into it and a creativity that most lawyers will never get the opportunity to experience.”

This freedom from obligation to a particular client while debating real-life legal issues will pay off later for law clerks when they bank on their ability to see all sides of an argument. “Seeing how things work at the decision-making level is immensely valuable when one begins to practice law and to craft arguments in support of a particular legal position,” says Von Keetch. *The Judicial Clerkship Job Hunt Book* reports, “Almost all lawyers who have worked as law clerks will tell you that they are better advocates as a result.”

### POSITIVE SIDE EFFECTS

As they considered the value of their Supreme Court clerkships, several of the Law School graduates commented on two personal benefits: self-confidence and satisfaction.

When asked what the most gratifying thing about his clerkship was, Monte Stewart—who was an academic leader in his senior class at BYU and had been offered admission to Harvard Law School—responded: “Finding out that I



could do it.” What the clerkship adds to the already-high self-confidence of these capable Law School grads is often in itself worth the experience.

Kevin Worthen “would recommend that students pursue clerkship options based solely on the personal satisfaction they will receive during the experience.” Von Keetch’s greatest satisfaction came from “working with colleagues who were among the brightest the legal profession had to offer on issues that were some of the most difficult to be found in the law.” Karl Tilleman says, “The most satisfying thing about my clerkship was getting to know such remarkable men and women.”

Although Denise Lindberg agrees that the “continuing relationships are, by far, the most satisfying part of a clerkship,” she adds that “having a front-row seat . . . observing the day-to-day workings of the Court—which to most outsiders (even in the law profession) remains a mystery—was very exciting. Despite the unrelenting hard work, it was always a thrill to sit in ‘my’ justice’s chambers on the Saturday before oral arguments . . . absorbing . . . the core principles that guided her decision making.”

#### OPENING DOORS

Opportunities are like dominoes: one can activate another. Those “lucky” enough to serve clerkships for a Supreme Court justice find that the door to the courtroom not only opens to a valuable learning experience but also opens up other opportunities benefiting their law careers.

The decision of what that career will be is often shaped by a clerkship experience. Kevin Worthen says, “The longer I am away from the actual clerkship, the more I have come to appreciate the positive impact that a judicial clerkship can have on a person’s life and career in ways that I had not anticipated while clerking.” He concedes that his interest in Indian law grew while he clerked for Justice White and saw three or four Indian law cases reach the Supreme Court. Worthen, a BYU Law School professor, also says, “One of the main things my clerkship did was to convince me I wanted to teach law. I enjoyed the pure discussion and debate of the law and what the law can and should do.”

## Stephen M. Sargent, '94

A shift from accounting to law seemed like a natural move to Stephen Sargent, who grew up in Fruit Heights, Utah, in a home with a father who continues to practice law after 30 years. “He seemed to enjoy his work, and he always made time for his children,” Sargent says. “In talking with him, I decided the practice of law was something that seemed both challenging and satisfying.” Apparently Sargent’s decision was right.

His acceptance as a judicial clerk for Chief Justice William H. Rehnquist for the 1994–1995 Term capped Sargent’s legal education. Having served

#### FIVE PERCENT BASKETBALL

as editor in chief of the BYU Law Review during the 1992–93 school year, he sat for the Washington State Bar in July 1993, then moved with his wife and young daughter to Kansas, where he clerked a year for Judge Deanell Reece Tacha of the U.S. Tenth Circuit Court of Appeals. After a year in Kansas,

Sargent began his clerkship in Washington, D.C.

“I felt that law school prepared me pretty well for my clerkship,” Sargent relates, admitting that he “was intimidated clerking with others who had gone to the ‘big name’ schools.” But working on cases that ranged from Vernonia—a fourth-amendment case questioning the legality of drug testing of student athletes—to death penalty actions, he discovered “an opportunity to see and work with some of the brightest legal minds in the country.” He says, “It taught me the value of hard work in the legal field. I gained a great appreciation for the Supreme

Court as an institution and a tremendous amount of respect for the justices who serve on the Court.” Like many judicial clerks, Sargent also appreciated that the docket of hard work often included a good game of basketball as well as tennis doubles with the chief justice every week. (No, the gold stripes on the sleeves of Rehnquist’s robe—added by the chief during Sargent’s clerkship—were not intended for athletic reasons.)

Leaving the Supreme Court but not Washington, D.C., Sargent worked as a litigation associate at the city’s law firm of Hogen & Horton for two years. In September 1997 he and his family moved west to Salt Lake City, where Sargent continues to work in estate planning for the law firm of Parr Waddoups Brown Gee & Loveless.

Sargent says that just about anything that takes him away from his law work provides a break for him. But he particularly enjoys basketball and golf and, of course, spending time with his wife, Kathryn, and their four children: Maren, 8; Spencer 4; Kendall, 2; and Samantha, 1.



## Jay T. Jorgensen, '97

Jay Jorgensen, the most recent Law School graduate to serve a Supreme Court clerkship, is the first to receive the position since the passing of BYU President and first Law School Dean Rex E. Lee in March 1996. Jorgensen acknowledges, however, that his knowing Lee was a reason he chose to attend the Law School and that Lee's opinion of his own Supreme Court clerkship influenced his decision to apply for a clerkship.

Jorgensen, who will work for Chief Justice William H. Rehnquist this coming fall, relates, "After I'd gotten news that I would interview with the chief justice, I spoke with several of his previous clerks to try and learn what I should expect, and I spoke with Steve Sargent" (who clerked for Rehnquist in 1994). "I don't know why I got it. . . . I was so surprised when the chief justice's secretary called."

Thinking back on why he went into law, Jorgensen describes his early decision: "I have known that I wanted to be a lawyer since I was about seven or eight. It's kind of funny, the thing that made me want to be a lawyer: I was sitting in my living room watching television, and my parents were watching



### THE LAST AND THE FIRST

President Carter give an address, and I thought to myself, you know, I want to be just like him. So I decided right then that I would become a lawyer. . . . It wasn't until years later that I learned that he wasn't a lawyer."

Besides the influence of Lee, Jorgensen's desire to "have some spiritual grounding in the law" helped him choose BYU's Law School. "My own personal experience shows me that law school tends by its very nature to invite people to rely on their own reasoning and not on what I would call the Spirit," he says. "I thought I would get that at the J. Reuben Clark Law School—and, indeed, I did."

During that three-year period, Jorgensen participated in various activities, including law review, trial advocacy, writing competitions, and the Federalist Society for Law & Public Studies. He also served as the national editor for an issue of the *Harvard Journal of Law and Public Policy*. During the summer of 1996 he worked in the Washington, D.C., office of Kirkland & Ellis, where he became acquainted with former Solicitor General Kenneth W. Starr. Solicitor General Starr occasionally spent time with Kirkland & Ellis' law clerks discussing his litigation background, an experience that influenced Jorgensen's desire to seek a litigation and appellate practice.

The fall after graduating from law school, Jorgensen clerked for Judge Samuel Alito, Jr., of the United States Court of Appeals for the Third Circuit. Following the clerkship with Alito, he returned to Utah as an associate at Stoel Rives in Salt Lake City, where he will continue to work until moving to Washington, D.C., in June. Jorgensen and his wife, Melissa, are pleased to return to Washington—this time with two "wonderful" daughters, who are four months old and 18 months old.

Eric Andersen says, “Ever since law school I had wanted to be a law school teacher,” and the clerkship “had great value in preparing me to teach law.” Andersen, a faculty member of the University of Iowa College of Law for the past 15 years and now associate dean, says, “I read judicial opinions far differently than if I had not served as a judicial clerk, and I try to pass some of that insight along to my students.”

That a Supreme Court clerkship, through its very prestige, empowers career opportunities was observed by Monte Stewart when the Law School’s charter class was graduating, but no law firms were coming on campus to interview.

*It was tough—nobody could get a job with a big firm, 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.*

The correlation between Supreme Court clerkships and law careers is not imagined. Many of Justice White’s clerks “have gone on to distinguished careers. . . . [T]here are four federal courts of appeals judges, a former solicitor general of the United States [Rex E. Lee], a member of Congress, a former state attorney general, the president of a university [Rex E. Lee], and the dean of an Ivy League law school,” Worthen reports. “There are also, of course, numerous law professors,” he quips. “Not even Justice White could redeem all his clerks.” Andersen believes that for him “the single most important thing for getting a job teaching was [his] clerkship with Powell.”

The personal connections lawyers make while serving as clerks also increase their visibility within the legal profession. “Who you know” at this level of the law can pave the way for a lawyer’s career. “A clerk often creates a lifetime network of friends and professional acquaintances who can have a positive impact on the

course of a clerk’s future career,” writes Worthen in *The Judicial Clerkship Job Hunt Book*. “The people with whom a clerk works, especially judges and other clerks, are either in influential positions—in the case of judges—or often headed in that direction—in the case of clerks.” The handbook further reads, “The recommendation of a judge known in the legal community will carry a great deal of weight with potential legal employers.” For Karl Tilleman, Timothy Flanigan, a fellow clerk of Chief Justice Burger as well as a BYU alum, introduced him to the law firm he joined after his clerkship.

Aside from what others can do for their careers, the clerks simply appreciate the individuals with whom they worked. Von Keetch muses, “I will always treasure the friendships and relationships fostered during the year I was at the Court.”

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#### A BRIGHT HORIZON

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The view has been and will be great for the nine Law School graduates who have seen the law from the “top of the mountain.” But will this record continue? Will future generations of J. Reuben Clark Law School students climb to such heights and clerk for the Supreme Court?

The outlook appears favorable for those students who work hard and set their sights as high as those of their predecessors—capable men and women who have become very good at seeing the finest detail in the big picture and for spotting those who should follow after them. Michael Mosman believes, “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.”

Is it worth the climb? The Law School’s nine grads who made it think so. Von Keetch speaks for each of them when he says, “A lawyer’s product is himself or herself. Refining that product and making it as effective as possible—to vigorously represent one’s client and to promote justice as an officer of the court—should be the paramount goal of each and every attorney. There is no greater university for learning and applying this concept than a clerkship position at the United States Supreme Court.”