





THE FOUNDING AND
MISSION OF J. REUBEN
CLARK LAW SCHOOL

ELDER DALLIN H. OAKS OF THE QUORUM OF THE TWELVE APOSTLES

It hardly seems possible that it has been 13 years since I last spoke at this annual Founders Day dinner. I am glad to be invited again. Dean Rasband suggested that I might speak about the founding of the Law School. I welcome that opportunity. Most of the leading figures in that effort are now gone, so it is timely for me to record my memories. I also welcome this opportunity to share my current impressions on how the graduates and faculty of J. Reuben Clark Law School are achieving the bold expectations with which this law school was initiated over 40 years ago. PHOTOGRAPHS BY BRADLEY SLADE

I. Church Leaders' Attitudes Toward Lawyers

I see the decision to have Brigham Young University establish a law school as the fourth phase in our Church leaders' evolving attitude toward lawyers.

In the beginning Joseph Smith's personal interaction with lawyers was apparently mixed. He consulted lawyers and they represented him in important contested matters, but, as Joe Bentley and I described in an early article in the *BYU Law Review*, it appeared after the Prophet's death that he had received very bad legal advice on how to hold title to Church properties under Illinois law. As a result, the Church experienced severe financial losses during the transition from the trusteeship of Joseph Smith to that of Brigham Young.¹

The second phase was Brigham Young's well-known hostility toward lawyers. In the early years of his presidency he called the actions of lawyers "an outrage upon the feelings of every honest, law abiding man" and referred to them as "a stink . . . in the nostrils of every Latter-day Saint in this Territory."²

In the third phase Brigham Young softened his attitude toward lawyers and in 1873 even encouraged young Latter-day Saints "to turn their attention to the study of law" as a way of defending the Saints from their persecutors and obtaining righteous advice in legal matters.³ A decade later Elder Franklin D. Richards reaffirmed that attitude in a statement that sounds remarkably modern:

*We do not want men to become lawyers, turn infidels, and live for nothing but the little money they can make. We want to raise up a corps of young men armed with the Spirit of the Gospel, clothed with the Holy Priesthood, who can tell the judges in high places what the law is, and what equity is, and can plead for the cause of Zion, and help maintain the rights of God's people.*⁴

This favorable attitude toward lawyers is reflected in the fact that 13 of the 97 apostles called thus far in this dispensation have been lawyers. The first was Stephen L Richards, ordained an apostle in 1917 at age 37. J. Reuben Clark Jr. was the second, in 1934. I was the eleventh, in 1984.

II. The Founding of the Law School

The culmination of our Church leaders' increasing acceptance of lawyers came with the founding of the Law School at BYU. One could say that the increasing number of lawyers in prominent Church leadership made this founding inevitable. However, this decision came at a time when it was hardly obvious that such an endeavor could be successfully accomplished.

As I begin these recollections on the founding of BYU's law school, I must caution that what I say is only one view of the matter. Other important recollections need to be considered before a definitive history of the Law School is written. A key resource that has been vital for me and will be for others is Carl S. Hawkins's important history.⁵ Others will be forthcoming.

The prime movers of the idea to establish J. Reuben Clark Law School were Elder Marion G. Romney and BYU president Ernest L. Wilkinson. The board of trustees approved their proposal in December 1970. That decision was announced March 9, 1971, simultaneously with the announcement that Ernest L. Wilkinson would be stepping down as BYU president.

In the meantime, President Wilkinson had begun preliminary investigations of what needed to be known to establish a law school. With his assistant, Jay W. Butler, he sought the advice of consultants (I was one of these), prepared dossiers on potential faculty members—mostly prominent LDS practitioners—investigated accrediting requirements, and assembled information on such essentials as a building, law library, and budgets.

When I was called as BYU president on March 27, 1971, and especially when my appointment was announced on May 4, I began serious consideration of these same matters. Having spent 10 years as a professor at the University of Chicago Law School, including over six months as acting dean, I had more experience with what would be necessary to establish a first-class law school than anything else for which I would be responsible when I became president on August 1.

From the beginning I was deeply concerned with the small number of active, experienced LDS law professors who could be recruited for the nucleus of the faculty. I knew of only three who had at least 10 years of experience at top-ranking law schools: Carl Hawkins at Michigan, Edward Kimball at Wisconsin, and Dallin Oaks at Chicago. I came to know that this count had overlooked a few, like Doug Parker at Colorado and Ray Jay Davis at Arizona. Also, I did not consider any at the University of Utah because I assumed that Church leaders would not want BYU to do any recruiting that could weaken the LDS representation there.

When President Harold B. Lee interviewed me as the prospective BYU president, he asked me what I thought of the recently announced decision to have a law school at BYU. I am embarrassed to recall the bluntness of my reply: "I think it's a bad idea." Surprisingly, that answer did not eliminate me from consideration. When Ed Kimball was first approached about the Law School, he had the same reaction: BYU didn't need one. Carl Hawkins's similar skepticism is evident from his year of declining offers to

join the new faculty—a matter I will mention later. When Rex E. Lee was chosen as dean, he also doubted that "there were enough LDS academics and practitioners who could make good academics to fill up a decent faculty."⁶

Early on I repeated my concerns to the BYU Board of Trustees in a way that I hoped would be helpful in preparing them to think realistically about the difficulties and costs of establishing a first-class law school. I shared my doubts that there were enough active, experienced LDS law professors in the entire country to provide the needed nucleus for a first-class law school. I gave my expert advice that establishing such

a law school would be extremely expensive. And I made the obvious point that it would be a big mistake to have a law school at BYU that was second class. Was this really the right time to try to establish a first-class law school at BYU?

Fortunately, the BYU Board of Trustees and its officers, the First Presidency, were

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firm in their decision. To me and to my fellow leaders in the university, the decision to establish a law school had been made by men we sustained as prophets, seers, and revelators. We assured the First Presidency and the board that we would seek the inspiration and expend the efforts to make J. Reuben Clark Law School the best law school it could be.

Establishing a new law school was a daunting task. We had to appoint a dean, recruit a faculty, assemble a library, construct suitable quarters, and attract an entering class. Two years later, in my August 1973 address to that entering class, I expressed what we were seeking to achieve:

The J. Reuben Clark Law School must in all respects be worthy of the name it bears. It cannot be satisfied with its assured standing among members of The Church of Jesus Christ of Latter-day Saints but must attain a greatness that transcends religious lines and establishes itself in the eyes of legal educators, scholars, the judiciary, the legal profession, the business world, officials of local, state, and federal government, and citizens at large.⁷

The university administrators who directed the earliest planning were Dallin H. Oaks, Robert K. Thomas (academic vice president), and Bruce C. Hafen (my assistant). Ernest L. Wilkinson was also an important advisor. As we began, we followed three principles, which Carl Hawkins later described:

Oaks decided that planning for the new law school should be governed by three principles that he followed himself and enjoined upon others subject to his authority: (1) that further decisions pertaining to the law school should not be made until a dean was appointed; (2) that until a dean was appointed, faculty members should not be appointed nor commitments made to prospective faculty members; and (3) that they should seek for appointment of a strong and independent dean who would report to the president of the university (through the academic vice president) and not to anyone else.⁸

Hawkins's summary is accurate as far as it goes, but in modesty he omitted an important fourth principle: we had to have Carl Hawkins as the senior member of the law faculty. This was essential because of his great reputation in legal education; because his advice and experience would be a key factor in the necessary decisions of establishing a first-class law school; and most particularly because the influence of his personal example, along with Ed Kimball's, would be essential as we recruited and acculturated new faculty members with relatively little experience in legal education.

The account of how 36-year-old Rex E. Lee was chosen as dean and the events that led to Carl Hawkins's delayed but inspired decision to join the J. Reuben Clark Law School faculty are well known, so I will mention them only briefly.

Soon after my appointment as president, the board of trustees appointed a

six-member search committee to recommend the dean of the new law school. This was unprecedented. I know of no other instance in which the board followed this practice to identify a dean at BYU. All but one of the committee were legally trained: Elders Marion G. Romney, Howard W. Hunter, and Boyd K. Packer of the Quorum of the Twelve; Marion D. Hanks of the Quorum of the Seventy; Ernest L. Wilkinson; and me. Elder Romney, the chairman of the search committee, later described the committee's work as being "just like you find stake presidents," declaring that "[Dean Rex E. Lee was] chosen by inspiration just as [are] our stake presidents."⁹

Bruce Hafen gave this description of the concluding moment in our yearlong recruitment of Carl Hawkins:

I remember the day that Rex and I were in [Dallin's] office. . . . Bob Thomas was there. We were talking about the law school. . . . It was a tense time. [Why? We had only one faculty member—Ed Kimball—and in one year we would welcome the first class.] The phone rang and the secretary said, "I think it's Professor Hawkins from Michigan on the phone."

Dallin said, "I think I had better take this call." He went to his desk and picked up the phone. He talked too softly for us to hear him, but we waited while he talked, chatting among ourselves. When Dallin came back he was touched. . . . He looked out the window at Timpanogos and then back at us. I saw tears in his eyes as he said, . . . "I guess the Lord really



wants this law school.” Then he started to smile and said, “I guess he really wants it to be a good one. Carl’s coming.”¹⁰

Rex Lee later shared his private thought at that dramatic moment: “If that’s the case, couldn’t he have said it four months earlier?”¹¹

III. Accreditation

With the appointment of Dean Lee and with the participation of the initial faculty, especially Carl Hawkins, my personal role in the founding of the Law School was materially reduced. In the second year of planning, the dean, faculty, and staff went forward with recruitment of the entering class, with vital additions to the faculty, and with needed fundraising for student aid. Apart from the major policy matters that came to the president’s office, my personal role was concentrated on using my knowledge and influence to obtain accreditation for the new law school.

As I look back on our accreditation efforts, I see several miracles.

First, I marvel that more than a hundred extraordinarily well-qualified young men and women who could have been admitted to many first-class established law schools took the breathtaking risk of enrolling at this new one, thereby committing their careers before they began. We had to justify that faith.

Second, I marvel at our overcoming the accrediting authorities’ reservations about approving a new law school (1) whose

sponsoring Church did not yet extend the blessings of holding its priesthood to all worthy male Church members and (2) whose university would charge 50 percent higher tuition to persons not members of the sponsoring Church. Logically, those doubts were eventually overridden by the undeniable quality of the faculty, student body, library, financial resources, and university affiliation, but to me the true explanation is the blessings of the Lord. A miracle occurred.

A third miracle was the timing. I have already described the timing doubts of some of the best-informed participants. As I look back I marvel at the inspired wisdom that impelled us to go forward in 1971. Since that time the forces opposing religion in public life have strengthened to the point that it is providential that we were accredited and could establish the record we have established in a friendly time. If we had waited until we thought we were ready by objective standards, we might not have been able to be accredited or would have been faced with requirements that might have caused us to forego our attempt.

IV. The Unfolding Mission of the Law School

This concluding portion of my talk is introduced by something I said in the 1973 ceremony in which we welcomed the first class. Noting that we were frequently asked why BYU was establishing a law school, I suggested that “the special mission of this law school and its graduates will unfold in

time.”¹² Now, more than a third of a century later, Dean Rasband has invited me to update that expectation. What have we done that begins to define that mission?

I am grateful to Dean Jim Rasband and to former deans Bruce Hafen, Reese Hansen, Kevin Worthen, and Jim Gordon for their review of an earlier draft of this talk. While the conclusions are mine, my expressions have been sharpened by their comments.

I will refer to six accomplishments of the Law School that, directly or indirectly, are helping to define its mission.

A. Quality of Legal Education

The establishment of a law school at BYU has doubled the number of men and women given a legal education in Utah. But this *quantity* increase is insignificant because most of these additional students would have been admitted and educated in other states and more than half of BYU’s law graduates leave Utah for other states.

What is significant is the *quality* increase. Just as the quality of BYU’s new law school was enhanced by the example of the University of Utah’s College of Law, so the U has used the example of BYU to persuade Utah legislature and donors to increase the quality of its physical plan and educational offerings. Competition has benefited the quality of law study at both universities in this state—so has the increased number of fine legal scholars interacting with one another. As I note this undeniable increase



in the overall quality of legal education in the state of Utah, I also affirm my satisfaction at the cordial, professional relationship between these two law schools.

B. Accomplishments of Graduates

The accomplishments of BYU law graduates are impressive for any law school but especially for one that has been graduating students for only a third of a century. Here are a few objective measures: Our BYU law alumni include nearly 100 state and federal judges and many, many local, state, and federal political leaders. Twelve graduates have served as law clerks in the United States Supreme Court. Few law schools have such a total in the last 40 years.

We who value Church leadership are impressed that 72 of our BYU Law School graduates have been called as mission presidents and 18 have been called to leadership as Seventies, eight of these as General Authorities. Hundreds of our stakes and wards have been blessed by the leadership of BYU-trained lawyers, both men and women.

Law School records show that 5,570 men and women have now graduated from J. Reuben Clark Law School. We believe that these graduates, whether in the legal profession or elsewhere, are using their law degrees and the critical and analytical skills they honed in law school in a multitude of ways that make us proud of their impact on the lives of their clients and families and on the legal and moral environment of their

communities and in their areas of influence. We believe (though we cannot prove) that these lawyers are better off and that our communities are better off because of their legal education at BYU.

We must also express gratitude for the J. Reuben Clark Law Society. This group of LDS and non-LDS lawyers has been a great blessing, serving as surrogate alumni when the Law School had relatively few; proving to be a wonderful and giving network of attorneys who have helped our students find externship opportunities and employment; and, in many instances, providing the Law School with vital financial support.

C. Accomplishments of Faculty

In terms of the scholarly work expected of faculty members in a first-class law school, the J. Reuben Clark Law School faculty's professional and public impact is worthy of high praise. This is a source of great pride to me. Granted, some of this work would have been done by these productive scholars if there were no law school at BYU and if they were working in other law schools for which they are well qualified. But I am sure you will share my conviction that much of the faculty scholarship in which we take such great pride is properly attributed to the fact that these men and women are working in a law school sponsored by The Church of Jesus Christ of Latter-day Saints. In that setting these scholars are enjoying the blessings that come from religious as well as

intellectual commitment and from the special reinforcement that comes from working with others similarly committed.

In many cases our faculty's scholarly work and outreach have been of immediate benefit to the Church—sometimes requested by the Church in a way that would not have been possible if these scholars were not working in a Church-sponsored institution. Prominent examples are the International Center for Law and Religion Studies' work to promote and protect religious liberty and the Marriage and Family Law Research Project's work on laws to strengthen the traditional family. Other scholarly work is of less direct but still important value to the Church by enhancing the rule and suitability of laws in the nations and communities in which our members reside.

Law journals and other publications sponsored by the Law School, including, particularly, the *Clark Memorandum*, have disseminated scholarly work and value positions in a way that would not have been possible if they were not based in a respected law school. The same is true of the many Law School-sponsored conferences, which have brought judges and scholars to BYU who have become acquainted with LDS leaders, thinkers, and values in a way that would not have been possible otherwise. And the value of such exposure is two-way, as our teachers and students learn from these important visitors. All of this strengthens the legal and moral culture of our nation and our church. Our students are greatly benefited by being



in the mainstream of such important intellectual and cultural currents.

The quality of our national and state government has been enhanced by J. Reuben Clark Law School faculty who have taken leaves of absence or left BYU to serve in high-level positions. Examples include Rex Lee as an assistant U.S. attorney general and later as solicitor general, Monroe McKay as a judge on the U.S. Court of Appeals, Larry Echo Hawk as assistant secretary for Indian Affairs, and Tom Lee as a justice on the Utah Supreme Court.

Brigham Young University has also drawn on its law faculty for leadership. Once it drafted a university president, once a provost, and four times a vice president, associate vice president, or assistant to the president—the draftees being Rex Lee, Bruce Hafen, Kevin Worthen, Jim Rasband, and Jim Gordon.

Reese Hansen was also drafted for academic leadership as president of the influential Association of American Law Schools. Having national peers elect a BYU law scholar and former dean to that prestigious position was an astonishing culmination to a journey that began with BYU leaders craving enough visibility and respect to qualify for accreditation.

D. Women in the Law

I am proud that BYU's law school has been actively engaged in welcoming women into the study, practice, and teaching of

law. About one-third of this law school's current students and full-time faculty are women. What a contrast to my 1957 class at the University of Chicago, in which there was only one woman in the class and one on the faculty!

One of my granddaughters graduated from this law school several years ago. During her law studies she had her first child, and she was pregnant with her second when she graduated. Through her experiences I know how women, including pregnant women and mothers, are encouraged as they study here. Her later exposure to a prominent law school community in the Midwest confirmed that J. Reuben Clark Law School is unusual and perhaps unique in the support system, care, and assistance it provides for the special needs of its female law students.

I am persuaded that law is a very appropriate study for women, married or single, and—at least at BYU—it can be readily harmonized with the parental responsibilities we consider so important. Among other characteristics, law is a profession that can be practiced from home and on a part-time basis. That surely is not true of many occupations women might choose or be compelled to pursue for support in the world in which we live.

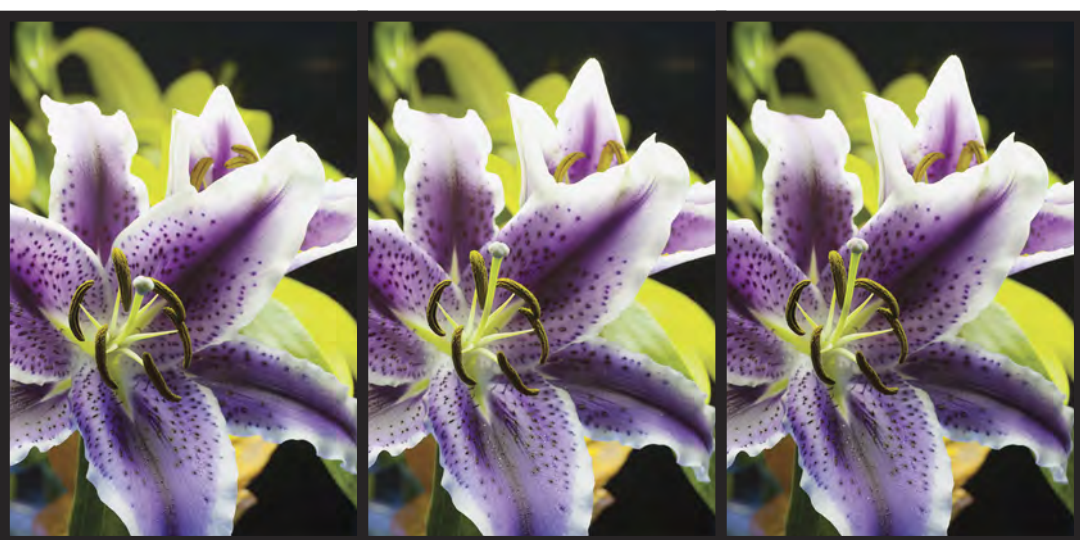
To this list of accomplishments I must also add an expression of gratitude for the thousands—both members and nonmembers—who have demonstrated their belief in the mission of this law school with generous

financial contributions. These contributions have enhanced the Law School's ability to accomplish its mission and have benefited many students who could not otherwise have studied law.

E. What Didn't Happen

From my earlier service in higher education, I evaluate university administration partly by what does *not* happen. Many things can go wrong or be a distraction to students, faculty, or the administration, and if they don't happen, that is a credit to the enterprise. Considering all of the things that could have gone wrong with this law school and its students and faculty, from the time of its founding to the present, I give J. Reuben Clark Law School very high marks. For the past 39 years the loyalty and performance of this unique community have been such that there has been relatively little need for damage control or mopping up. As a result, the efforts of its participants have been almost entirely concentrated on furthering personal and institutional missions.

I also have special appreciation for the fact that there has been no realization of the fears that this law school would have an overriding political orientation. That was a serious concern when we were assembling faculty and setting other directions. The efforts and wisdom and tolerance of many have forestalled those fears. Politics cannot be ignored in legal study because politics are pervasive in lawmaking and administration.



But what is called “political correctness”—on either the extreme left or the extreme right—has been resisted, personal choices have been honored, and reasonable discourse and concentration on legal scholarship have prevailed in this corner of legal education.

F. Effect of Comparatively Low Tuition

Finally, I endorse another accomplishment of J. Reuben Clark Law School that had not occurred to me. Dean Rasband described it as follows:

*Because the board of trustees has kept tuition so low, BYU law students can still afford to value a legal education for more than what it will produce in the marketplace. I believe this is a wonderful thing. It frees all of our graduates to pursue career and family choices that may be best for reasons other than the ability to produce an income and pay off large student loans.*¹³

Of course! And in this time of great concern with the personal and public impact of student loan indebtedness, this advantage also applies to students in other large BYU graduate programs, such as business and public administration.

V. Conclusion

It is time for me to conclude. I do so by repeating some fundamental principles I have previously expressed to the members of this legal community:

The rule of law stands as a wall to protect civilization from the barbarians who would conduct public affairs and settle private disputes by power, position, or corruption rather than by recourse to the impartiality of settled rules of law. Lawyers are the watchmen on that wall.

*Devotion to the rule of law means that . . . a lawyer’s predominant professional loyalty should be to the principles of the law, not to the officials who administer them or to the person, organization, or other client in whose interest those principles are applied. A lawyer obviously owes a high duty of loyalty to his client, but the duty he owes to the Constitution and laws is higher still.*¹⁴

The gospel incorporates the most important ideas in time and in all eternity. Its commandments, its covenants, and its teachings were established and shared by God our Heavenly Father, the Creator of us all. He desires that we be happy in this life and exalted in the life to come. . . .

*The most important idea for any of us is that this life, with all its advantages and disadvantages, is only temporary. It is part of a larger whole. Our challenge is to develop the perspectives to realize and the strength to act upon the realization that the really important achievements of this life are those that carry enduring, favorable consequences for the eternities to come.*¹⁵

One of those mortal achievements of eternal significance is to contribute to the success of an endeavor established by the Lord to bless His children. As I said to the

first entering class and faculty of J. Reuben Clark Law School 39 years ago this month:

*We are privileged to participate in this great venture. It is our duty to make it great. He who builds anything unto the Lord must build in quality and flinch at no sacrifice toward that end.*¹⁶

You have done so over the years that have followed, and for this I thank you and invoke upon you the blessings of Him whom you have served, in the name of Jesus Christ, amen.

NOTES

- 1 See Dallin H. Oaks and Joseph I. Bentley, “Joseph Smith and Legal Process: In the Wake of the Steamboat Nauvoo,” *BYU Law Review* (1976): 735, 776–82.
- 2 *JD* 3:240; quoted in Edwin Brown Firmage and Richard Collin Mangrum, *Zion in the Courts: A History of the Church of Jesus Christ of Latter-day Saints 1830–1900* (Urbana: University of Illinois, 1988), 17.
- 3 *JD* 16:9; quoted in Firmage and Mangrum, *Zion*, 17.
- 4 *JD* 26:103; quoted in Firmage and Mangrum, *Zion*, 18.
- 5 See Carl S. Hawkins, *The Founding of the J. Reuben Clark Law School* (Provo, UT: BYU Studies, 1999).
- 6 Rex E. Lee, remarks at a Law School fireside, September 18, 1988; quoted in Hawkins, *The Founding*, 10.
- 7 Dallin H. Oaks, *Addresses at the Ceremony Opening the J. Reuben Clark Law School*, August 27, 1973, 7.
- 8 Hawkins, *The Founding*, 9.
- 9 Marion G. Romney, quoted in F. Burton Howard, “Keeper of the Flame,” *Clark Memorandum*, fall 1994, at 25.
- 10 Bruce C. Hafen, remarks at the retirement dinner for Carl Hawkins and Douglas Parker, April 27, 1991; quoted in Hawkins, *The Founding*, 20.
- 11 Rex E. Lee, remarks at Founders Day program, August 27, 1993; quoted in Hawkins, *The Founding*, 22, n. 10.
- 12 Oaks, *Addresses at the Ceremony*, 4–5.
- 13 James R. Rasband memo to Dallin H. Oaks, June 28, 2012, 2.
- 14 Oaks, *Addresses at the Ceremony*, 8–9.
- 15 Dallin H. Oaks, “Values,” *Clark Memorandum*, spring 1991, at 15.
- 16 Oaks, *Addresses at the Ceremony*, 5.

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