

# The Heritage of the Country Lawyer

BY SCOTT W. CAMERON

Decades ago the writer Bellamy Partridge concluded that “the country lawyer, as he existed between the days of Abraham Lincoln and Calvin Coolidge, is no more.” In an attempt to keep this heritage of the country lawyer alive, the Hugh W. Colton Professorship was established at the J. Reuben Clark Law School in 1987. After a distinguished career as a young lawyer and businessman in Washington, D.C., Hugh Colton returned to Vernal, Utah, in 1929. He continued to practice law for more than 60 years, in a practice that included natural resources, livestock and public lands, water law, commercial law, and litigation. He was also involved in other aspects of private practice in Utah and Colorado.

The Colton Professorship provided the impetus needed for the Law School to continue the tradition of the country lawyer. This professorship made it possible for the school to hire Gayle F. McKeachnie, a distinguished practitioner, community leader, and former legislator, to teach a law practice management course. In 1972, when Gayle returned to his hometown of Vernal to open up a practice, Hugh Colton was one of six attorneys practicing in the area. Hugh and Gayle were born a generation apart on their respective farms in the Uintah Basin. Neither contemplated law practice in their early years, but as is often the case, lives have a way of taking their own course. Their service to citizens of the Uintah Basin overlapped for more than 20 years, and now—through the Colton Professorship, Gayle’s practice, and the students he is teaching—the influence of the

country lawyer will continue well into the next century.

Gayle McKeachnie grew up on a farm and always planned to stay on the farm, but a basketball scholarship to the College of Southern Utah intervened. It was there that he read the Book of Mormon for the first time and became converted to the gospel. Basketball led to college, and college led to a mission, and interestingly enough, his mission to Mexico led him to law. While serving in the mission home, Gayle met Agrico Lozano, the Church’s legal counsel in Mexico. He worked with Attorney Lozano to purchase property for the Church, and through this experience his interest in law began.

Following his mission, Gayle returned to the College of Southern Utah. During this time, he felt a force pushing him toward law school that was almost as strong as the desire he had to return to his family farm. After graduating in political science with a minor in Spanish, he decided to pursue a career in law and attended the University of Utah College of Law from 1967 to 1970. For two years following graduation from law school, Gayle stayed in Salt Lake City, where he practiced corporate law and natural resource law for the firm of Senior & Senior. While he loved his practice and enjoyed the Salt Lake area, his farm in the Uintah Basin began to pull him home once again.

Vernal was a boomtown in the early 1970s when the oil embargo created great interest in oil shale and tar sands. Gayle realized he could have the best of both worlds; he could return to the Uintah Basin to practice natural resource law and

once again have the chance to do a little farming. Most important, he would be home. He did make the move home, and even though his natural resource practice did not last as long as he had wished because of a decline in the Uintah Basin’s oil industry, Gayle has always thoroughly enjoyed the practice of law in Vernal. It provided him the opportunity to serve in the Utah Legislature for more than eight years. He notes that virtually all of the attorneys who serve in the state legislature have small practices. He indicates that few large law firms are willing to subsidize a partner for three or four months each year while the partner serves in the legislature. His small town practice has also allowed him to have a partnership arrangement with a Salt Lake City firm and to open a branch office in Roosevelt.

Among the virtues of practicing law in a small town is the opportunity to become part of the fabric of the community. Not only has Gayle’s firm represented virtually every organ of city and county government, but it has been involved with the Chamber of Commerce and has had myriad opportunities to assist the nonprofit sector of the community. The only drawback he sees in practicing law in a small town is that everyone “sees your warts.” Frequently, you are in adversarial situations with those who are neighbors or at least acquaintances. While serving as a stake president in Vernal, Gayle never represented anyone who opposed a member of his stake. This decision had adverse economic consequences, but he feels that even these problems were made up for in other ways. He indicates that while lawyers may

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not take their role as adversaries personally, the clients feel the hurt and attribute it to opposing counsel.

Being in Vernal has also presented numerous opportunities for Gayle to teach. He has taught for the Utah State University Extension Division and, most recently, for the J. Reuben Clark Law School. In his law practice management course, Professor McKeachnie divides the students into law firms. He has them write a partnership agreement, where they decide if they will run as a full-fledged team, as a loosely bound confederacy, or merely as attorneys who have an office-sharing agreement. He indicates that the way partners get along with one another is one of the most important aspects of a small practice. The simulated experience of working in a law office where projects are handled together is one of the most valu-

able lessons future attorneys can learn. The “law firms” are graded as a partnership. The students create an organizational chart and divide the management responsibilities of the practice. They decide how to fund the creation of the law office, whether or not to have a library or use electronic databases, how to furnish their office, what billing system to use, how to hire support personnel, how to compensate personnel, and how to split the profits. One exercise that is particularly difficult for students is timekeeping. The students keep track of their time from 7:00 a.m. until they retire for bed. This exercise shows students how difficult it is to keep track of billable hours and how important it is to make better use of personal time. Students also learn “how to design a life.” They must sit down and determine how many hours they will work and how much time they will allow for

civic responsibilities, church responsibilities, and family commitments.

The students are pleased with the attempt to keep the tradition of the country lawyer alive. Isaac Paxman indicated: “The class could almost be called ‘Life Management for a Lawyer.’ We learn how to balance our lives so our practice doesn’t manage us. Professor McKeachnie is a great example of a gentleman lawyer.” Another student, Ben Lund, found that confronting the practical problems that students will face in the practice was helpful: “The diverse insight and knowledge he [McKeachnie] brings to the class will be helpful in whatever law firm setting we might work.” The Law School is indebted to the tradition of the country lawyer exemplified by Hugh W. Colton and reinforced by the teaching of Gayle McKeachnie.

# Last Laugh: A Mission for the Morgans

BY LOVISA LYMAN

"Man plans and God laughs" is a saying Kathryn Boe Morgan believes typifies many lives, including hers and her husband Thomas D. Morgan's. It's true that their lives have not turned out exactly as either of them planned. Both were born in the Midwest and intended to remain there. Both married in their 20s fully committed to stay in those relationships for the rest of their lives. Both would have laughed 10 years ago if anyone had suggested they would end up teaching at BYU law school. "And after we laughed," says Tom, "we would have dug out a map to see just where Provo, Utah, was." Yet in 1998 Tom Morgan was honored to become the first recipient of the Rex E. Lee Chair, a professorship funded by law school alumni and friends of Rex E. Lee, and the couple willingly left prestigious positions in Washington, D.C., to move to Utah.

## Enter Kathryn

Over the past 30 years, both Kathryn and Tom have made names for themselves in the legal field. But as a young girl, Kathryn, an accomplished pianist, did not even consider a legal career. Rather she decided she could best use her talents by serving God in the Catholic Church. At 18 she joined the Dominican Order. As a nun, she completed her teaching degree and taught music to kindergarten through 12th grades. ("When people call me 'Sister Morgan,' as they often do out here in Utah," she confides, "I still do a double-take.") After six years, at a juncture when further vows were to be taken, she elected to leave the order and serve the church as a layperson. She returned to her home in Nebraska, where she completed a master's

in music, married, and had two children, all the while continuing to teach music. Kathryn opted to attend law school to prepare to better support her children when, in her late 30s, she found herself a single mother. After graduation she discovered the area of law that has continued to fascinate her: franchising. As a new associate at a firm, she was handed a file on a franchising issue to research. She quickly learned that "when franchising works, it is the best of business possibilities. The franchisor profits when the franchisee does. Each learns from the other."

Soon Kathryn was the most experienced franchising attorney at the firm. But in 1980, after she had been in practice only a year, Creighton's dean of law called to ask if she would return to her alma mater as assistant dean. Her love of teaching and working with students was a determining factor in her acceptance. Back at Creighton, her interests in franchising and education fed into one another, because not only did she supervise recruiting, admissions, and financial aid, but she designed and taught one of the first franchise courses in the country. As her



expertise in franchising increased, she accepted other outside opportunities, including membership on a board of directors for a large franchising subsidiary, an of counsel position with a firm where she worked specifically on franchising cases, and retention as an expert witness by firms around the country in disputed matters involving franchising. In 1989 Kathryn was invited by the president of Creighton University to become his assistant. She accepted on condition that she could continue teaching at the law school. In her new position, she supervised all university legal work and worked on long-range planning, budget, personnel, corporate, and operational issues. She continued as assistant to the president until 1990.

#### Enter Tom

Tom's grandfather's and father's examples convinced him to become an attorney. Not only was his father a successful attorney, but he "took important time away from his practice to give of himself to community service at a time when [the] city desperately needed honest leadership" (Thomas D. Morgan, "Heroes for Our Time," *Clark Memorandum*, Fall 1992, p. 25). After graduating from the University of Chicago, Tom planned to join the long-established family firm in Peoria, Illinois, but before entering practice, he hoped to try teaching. At law school, he met someone who would become one of his personal heroes: Elder Dallin Oaks, then a professor of law. Oaks offered him his first job in teaching and "showed [him] that teaching could be a career with satisfaction and value" (*ibid.*). After teaching at the University of

Chicago for a year, Tom taught a year at the University of Illinois, then joined the Air Force. It was 1967 and the Vietnam War was still raging. Tom was stationed in Washington, D.C., where he worked on procurement contracts for the Office of Air Force General Counsel. During his final year in the service, he was named special assistant to the assistant secretary of defense for manpower. Once released from the Air Force, he would have returned to Peoria and joined the family firm, but his father had been made a federal court judge, and Tom's practice there would have created a conflict of interest for everyone in the firm. Instead he accepted an offer to teach again at the University of Illinois law school. In the subsequent 10 years there, he established himself as an undisputed legal scholar. In 1980 he was selected as dean of Emory law school in Atlanta, where he served for five years, then remained for another four as distinguished professor of law. In 1989 Tom accepted the position of Oppenheim Professor of Antitrust and Trade Regulation Law at George Washington University.

#### Re-Enter Kathryn

At about the time Tom moved to George Washington, his first marriage ended, and he was left to parent his two teenage daughters. It was then that he rediscovered a compassionate friend in the Midwest who was experiencing many of the same challenges. He and Kathryn had met 30 years before when both were living in Washington, D.C. Kathryn remembers distinctly the day the two families ran into one another in the basement of the National Gallery of Art. The husbands

had been law school acquaintances. The young couples became friends immediately, and over the years, as each made a number of career moves, they exchanged annual Christmas greetings. Once Tom and Kathryn had renewed their friendship, a long-distance relationship was quickly unsatisfactory. With the precise timing the government is not particularly known for, the Agency for International Development (AID) in Washington, D.C., approached Kathryn with a proposal that she relocate and help design a program in economic assistance for Eastern Europe. Since franchising is one of the best techniques for the transfer of business knowledge, the job was a good fit. She accepted, and soon the couple married. The following year, she was appointed director of policy for the agency. After the Clinton inauguration in 1993, she left government service and began consulting on international business and franchising and teaching in the MBA program at American University. Both Tom and Kathryn found Washington invigorating and professionally satisfying and fully intended to remain there until retirement.

#### Enter BYU

In 1992 Tom made his first visit to BYU as a commencement speaker for law school graduation. He had not visited the school before but accepted the invitation primarily on the basis of his friendship with Dean Reese Hansen. By that time Tom was one of the best-known legal educators in the country. He had been president of the American Association of Law Schools (AALS) in 1990 and had just finished six years of service on the AALS Executive Committee. He had authored three widely used and respected textbooks in the areas of professional responsibility, antitrust, and regulated industries as well as scores of scholarly articles and presentations. His text on professional responsibility is still the best-selling text on the subject, garnering about one-third of the market out of 30 competitors. So it was a great privilege for the graduates at BYU to be addressed by him.

The attraction was mutual. In 1994 he accepted a semester-long appointment as a visiting professor. Tom and Kathryn were

impressed with the students and faculty. Says Tom, "The students were outstanding. It was the best teaching experience I'd had in 30 years." When they returned to Washington, they felt they were leaving dear friends and a school important to them. "We were amazed," says Kathryn, "at how quickly we had put down roots."

So when Tom was invited to join the Law School board of visitors, he gladly accepted, and from 1996 to 1998, he returned annually to renew friendships and meet and counsel with students. Meanwhile the Rex E. Lee Chair was in the works, and Dean Hansen had already made some preliminary inquiries about Tom's interest in becoming the first occupant. Neither Tom nor the dean initially anticipated that the funding would move along as quickly as it did, however. Fortunately the Morgans' personal situations were such that an earlier move was possible. Their four children were established. Some of their long-term commitments were winding down. Kathryn's term as director of research for the International Franchise Association Educational Foundation was expected to end midfall 1998. Tom's obligation as reporter on ALI Restatement of Law Governing Lawyers would end spring 1998. Some ongoing work could be performed as well in Utah, such as Tom's updating his casebooks and serving as an expert witness in attorney malpractice cases. Both relished the prospect of a slower pace and, in anticipation, took a few golf lessons.

While Kathryn contemplated leisurely walks in the mountains around her new home and snuggling down with a favorite author, plots were afoot to relieve her of some of her free time. The BYU Law School's new lawyering skills program was midway through the first year when Tom's acceptance was officially announced, and the program lacked instructors for the second year. Kathryn was highly qualified to teach writing and analysis with her years of teaching and administration, editing journals, writing publications, and doing presentations. Lawyering skills program director, Associate Dean Constance Lundberg, approached Kathryn about accepting an adjunct position. After some

thought, Kathryn accepted. Since coming to Utah, Tom has also taken on an additional assignment: he accepted an invitation to serve for at least two years as a reporter for Ethics 2000, the new ABA effort to rewrite some of the ethical rules governing lawyers. As a result, they have not played golf and have taken only two hikes in the canyon since arriving in Utah, and neither has a free weekend for the rest of the semester. They are even fully booked for the Christmas holidays, when Kathryn, as a former Bush administration official, and Tom, as the Rex E. Lee Professor, will be featured speakers on a cruise to Australia and New Zealand. Come January they are hoping for more free time. But then Kathryn plans to start work on a book about franchising. All in all, it is not looking good for golf.

Nevertheless, both seem content with their decision to come west. They attribute the feeling of well-being to new friends, both at the Law School and in their neighborhood, and to their students. "For us," says Kathryn, "BYU is a sort of mission—not in the sense of proselytizing but in the sense of a calling, or vocation." Part of their mission is to help their students see how good they are and how good they can become. "They need to expect more of themselves," asserts Tom. Kathryn concurs: "BYU students have high ability and are open to being taught and willing to work. They are capable of more than they know." Tom clarifies, "Students here are less worldly than students at other schools. This is both positive and negative." In teaching regulated industries, he sees a lack of intuitive understanding of how government really works. Some students have a similar naiveté about the workings of law firms, he says. "They care about behavior and how law should be practiced. They hope to have an ethical practice. But law firm pressures and working conditions are alien to many." Tom doesn't mean to be cynical when he says that "students must face the fact that the world is complex and clients sometimes lie." He saw the opposite problem in Washington, where students were sophisticated about regulated industries issues and less concerned about ethics. He hopes to see increased realism at BYU as time goes on but at the same time

wants to nurture the strong ethical behavior already in evidence. Of the future, he says, "There is greater likelihood that more of the graduates from BYU's law school will have a positive impact on their communities and the world than will the graduates from any other school." The Morgans aren't certain what their role in that future will be. Says Tom, "People frequently ask why we came here. I answer, 'I'll be darned if I know.' None of us can know with clarity what our acts will lead to. Time will tell what impact, if any, we will have. We'll leave that in God's hands."

Though the Morgans cannot say exactly what their purpose is in coming to BYU, Tom's letter of resignation to George Washington University sums up their best approximation: "I have thought a lot about how I can most constructively spend the last years of my own career. Clearly, given the quality of life here, one good answer would be to count my blessings and continue teaching [in Washington] . . . as long as I can make it to the classroom.

"On the other hand, . . . three years ago I spent the fall semester teaching at Brigham Young University in Provo, Utah. It was an experience unmatched at any of the other outstanding schools with which I have been associated. . . .

". . . Neither Kathryn nor I are members of the LDS Church, but as embodied in its university and the warmth of its members' acceptance of us, we have found it to represent a remarkable testament of God's work on earth. Indeed, Brigham Young University is one of the rare remaining examples of what all religiously affiliated universities once aspired to be—an institution that sees its students as persons of infinite worth and believes that their education for faithful lives represents the world's best hope for a humane and productive future.

". . . I have been offered and have accepted a position as the first Rex E. Lee Professor of Law at Brigham Young University. I have, of course, been deeply honored to occupy the Oppenheim Chair here, but there was only one Rex Lee and there is only one BYU."

Kathryn and Tom Morgan have reached that enviable juncture when they can willingly laugh along with God.

# The Best Tell Stories

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Paul Warner, Utah's new u.s. attorney, tells stories. He has the manner of a late-20th-century Mark Twain sans white suit, white hair, and mustache. While there may not be a physical likeness, there is definitely a likeness in style. Paul's ability as a storyteller predated his law school days, but its potential usefulness in the profession surfaced in Woody Deem's criminal trial practice class in 1975. Somewhere in the framing of opening statements, introducing exhibits, and closing arguments, a light went on. Paul discovered that there was a place in criminal trial practice for a person who could weave a story, tell a joke, and even crack courtroom tension with appropriate humor. This discovery affected his choosing the Navy JAG as his first job and has influenced his life ever since.

He says he preferred the Navy JAG over other military branches because he would receive a direct commission without ROTC and without three months of basic training. He wanted trial experience more than exercise. However, in thinking about getting trial experience "early and fast," he forgot to think about those he would be defending and prosecuting: drug dealers, rapists, and murderers—a group he affectionately calls the "cream of the crud." The training was excellent, and Paul enjoyed his five and a half years with the Navy. During these early years he faced one of the most difficult split-second decisions of his life, an experience that gave him yet another story to tell.

## The Story of the Young Sailor

Paul was assigned to represent a sailor from New Jersey accused of stealing a box of fragmentation grenades. The sailor's father had alleged Mafia connections. It seemed like a routine case until one morning Paul was visited by a rather nattily dressed attorney from New Jersey who worked for the sailor's father. The attorney wanted to review the progress of the defense and offered his assistance. Paul entertained the lawyer briefly and indicat-

BY SCOTT W. CAMERON

ed that while outside counsel was allowed, it would not be necessary in this case.

Two weeks before trial, the attorney called again and asked about the strength of the defense. Paul indicated that the defense was strong, except there was an alleged eyewitness to the theft. The attorney then posed a shocking question: "Well, what would happen to the case if this guy disappears?" Knowing that the young, alleged eyewitness had completed his service and was living in New York, and being fairly certain that "disappear" was just a euphemism, Paul's mind raced. He wondered if an innocent person would be harmed if he said it would help a great deal if the eyewitness disappeared. On the other hand, he worried that harm might come to himself or his fam-

ily if he said a disappearance would not help and he lost the case. Paul made his decision and said, "I don't think it would look right if the key witness were to disappear."

The trial came and Paul was concerned. The sailor's father—black suit, white hair combed back in a pompadour—sat at the rear of the courtroom with his attorney, another rather large, ominous-looking fellow who looked to have more brawn than brains. When it came time for the eyewitness to appear, he was not in the courtroom. A ticket had been forwarded by the Navy prosecutor to American Airlines in New York City, but when the young man went to get on the plane, the ticket had been canceled. A continuance was given and another ticket was ready the next day, but when the eyewitness appeared a second time at the airport, the ticket had been canceled again. Paul wondered who could can-



cel a ticket that had been issued by the Defense Department. The prosecutor asked Paul if he would stipulate to the alleged eyewitness' testimony. Paul indicated that he would, reserving the right to argue to the jury how difficult it was to cross-examine a stipulation. Eventually, the jury acquitted the young sailor. The sailor's father rushed to the counsel table. Saying nothing to his son, he embraced Paul and kissed him on both cheeks, telling Paul that he was in debt to him. As politely as possible, Paul assured him that he owed him nothing. He also turned down an offer of employment by the father's attorney.

### The Value of a Joke in the Real World

At the conclusion of his experience in the Navy, Paul was concerned that his professional life might be more boring. He was hired by the Utah Attorney General's Office in the Litigation Division. Within a short time, he became chief of the Litigation Division and then deputy attorney general. It was here that he had the sobering experience of representing the state of Utah in commutation hearings in two death penalty cases. Paul explains that all philosophical niceties of the debate over capital punishment are rendered moot when as an advocate you are personally involved in a decision being made whether to commute a death sentence.

After six and a half years with the Utah Attorney General's Office, Paul was hired in the Civil Division of the u.s. Attorney's Office by u.s. Attorney Brent Ward. For the past 10 years he has held virtually every position of responsibility in the u.s. Attorney's Office: first assistant under u.s. Attorney Dee Benson ('76); violent crimes coordinator under David Jordan; interim u.s. attorney; and criminal chief under Scott Matheson. Along with the foundation of legal skills that would serve him in each of these positions, Paul's sense of humor was tested and sharpened in law school. His classmates will long remember the day in contracts class when Professor Rooker flipped Paul a dime and said, "Mr. Warner, go call your parents and tell them you'll never be a lawyer." Catching the dime and immediately flipping it back, Paul drawled, "No, Mr. Rooker, you keep it and call all your friends."

Even after Paul graduated from law school, he understood the value of having a good sense of humor. In an interview with the *Deseret News*, he said, "Some issues we deal with here are ugly, unpleasant and troubling, but if we joke a little, it makes it easier to do what we do."

Sometimes this joking takes the form of "speaking the unspeakable." One time while in the Navy, Paul was in a meeting with several attorneys deciding how to proceed on a tough case. Differing opinions were expressed. Finally, a tough-talking senior officer announced a decision that no one seemed to like. He turned to Paul and said, "I can tell from the look on your face, Warner, that you think I am a hard-nosed SOB because of my decision." Paul paused a moment as the other officers present focused on him for a response. "No sir," he retorted. "I formed my opinion of you long before that decision."

### Ego Without Pretension

Another attribute of a successful trial lawyer, and particularly a prosecutor, is a healthy ego. According to Paul there are few other professions where your performance is judged on such clear terms as whether you have won or lost. The law school experience was invaluable in this regard as well, for as Paul notes, you have to have a healthy ego to survive law school. While Paul indicates that he and Linda, who were married immediately prior to Paul's commencing law school, cried most of the first semester, he survived by the use of his wit. That wit had a captive audience when Paul was elected editor of the newly created student newspaper, the *Clark Memorandum* (which he hastens to add has little resemblance to what he considers CM's present "slick image"). The original *Clark Memo* used a tabloid format, which Paul says was "yellow journalism at its best."

### Prosecutor as Gatekeeper

Paul claims that the prosecutor is the most important person in the criminal system. While a police officer may investigate, and even arrest, it is the prosecutor, as gatekeeper, who must exercise discretion to determine whether or not to

charge. Knowing that the mere act of charging a crime may ruin an individual's life, the prosecutor must be certain he has the evidence necessary to convict. Paul emphasizes that in his position as u.s. attorney, he must decide whether or not to prosecute an alleged crime, not a specific individual. Paul explains that while a person might be despicable, you cannot run that person through the system if there is not sufficient evidence to convict him of the specific offense. A u.s. attorney must have good legal judgment and knowledge of the law to come to the correct decision. An unwise decision by the prosecutor may undermine public confidence. In an article in the *Deseret News*, Paul pledged that fairness would be the hallmark of his administration. He indicated that he wants to show compassion and dignity and that he believes the statement "The United States wins its case whenever justice is done to one of its citizens."

### Sincerity Cloaked in Humor

For those who know Paul, his pledge of fairness is in keeping with the way he has conducted his life. While his manner is humorous, his humor is a cloak for sincerity, trusted because it makes sure he doesn't take himself too seriously. While the Law School cannot take credit for his sincerity, at least it can pride itself on not destroying it.

When asked why he attended law school, Paul explained that in the spring of 1971 he was sitting in the Wilkinson Center listening to President Harold B. Lee speak at a devotional. The prophet announced the formation of a law school at BYU, and as Paul ate a donut, he had the strong impression he should attend the new law school. This was quite a switch for a premed major, who took English classes to preserve his sanity. Paul explains that he never thought it was a risk to attend an unaccredited school. He knew that a school organized under the direction of the First Presidency would succeed.

While Mark Twain would have a heyday satirizing 20th-century lawyers, one of them would not be Utah's recently appointed u.s. attorney, Paul Warner, a man who mingles storytelling and a sense of humor with the demands of the legal profession.