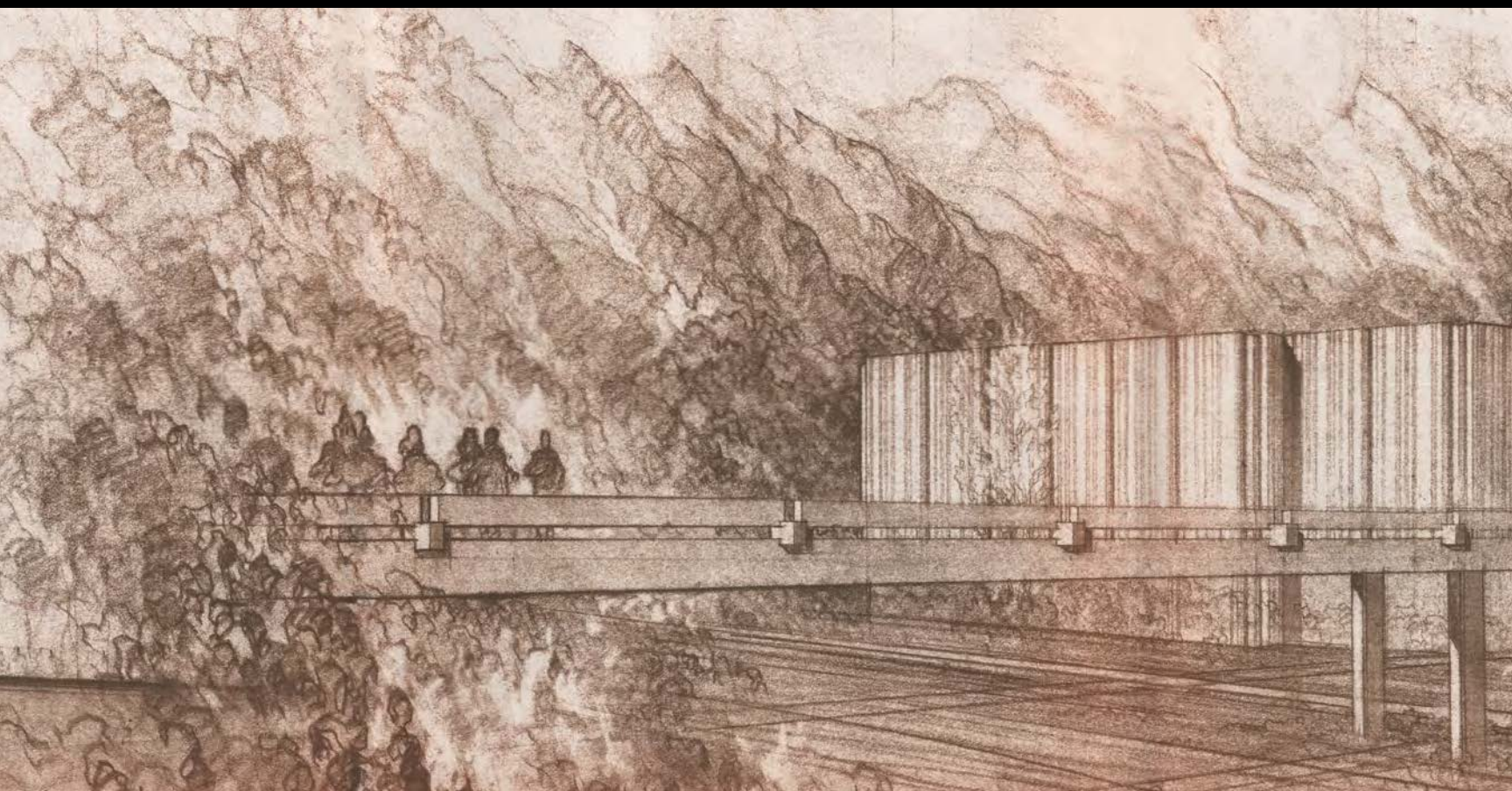
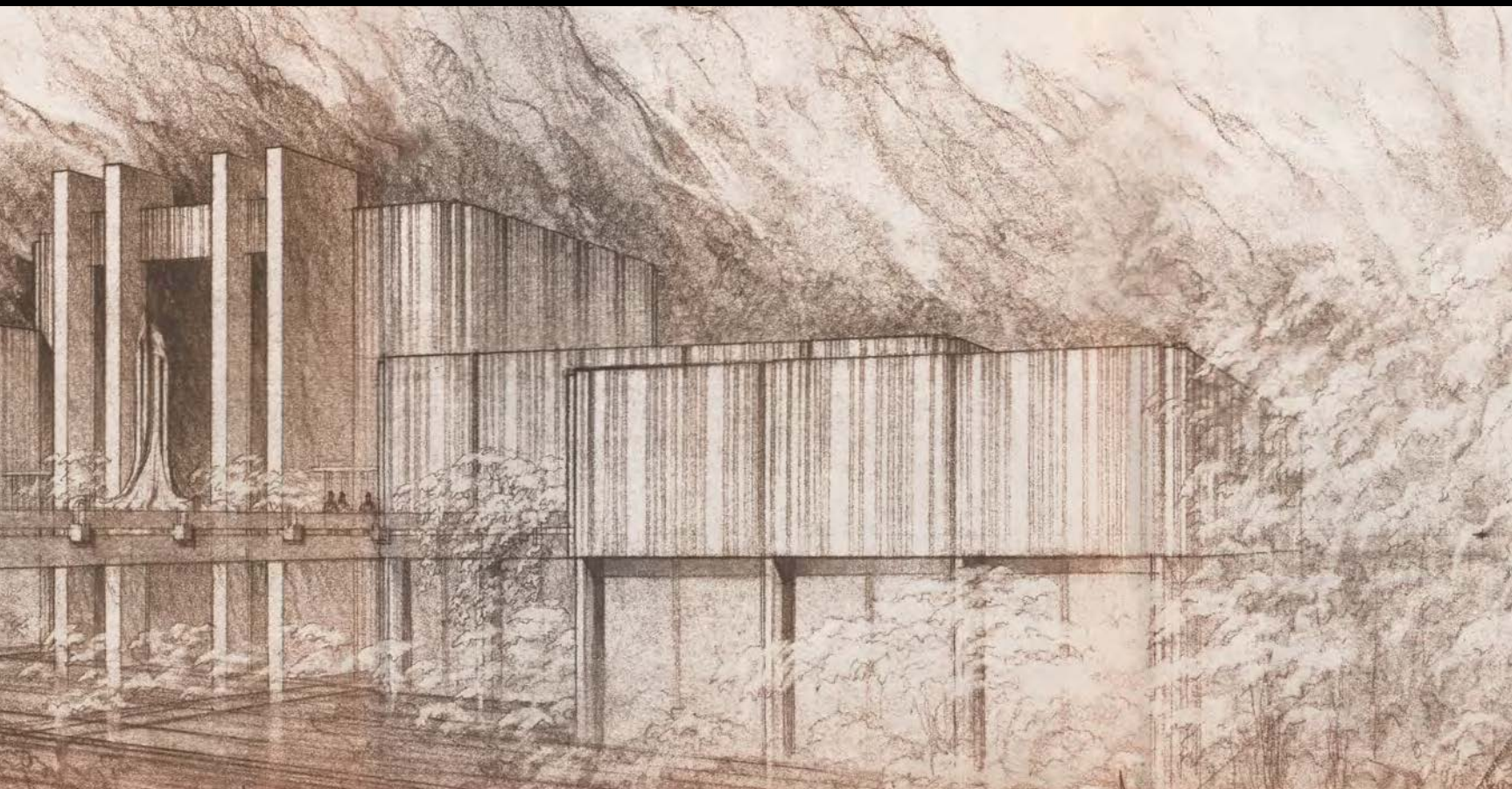


THOUGHTS ON THE



OF J. REUBEN CL

SPECIAL MISSION



ARK LAW SCHOOL

MONTE N. STEWART

PART ONE will focus on the founding of the Law School. Perhaps to a greater extent than anyone else in my generation, I was a personal witness to the public events in the founding of the Law School. That is not a boast; there is no particular merit in happening to be a bystander and an observer to events caused by others. And I repeat for clarity that I was a witness to the founding's public events; no one of my generation was involved in the crucial private events leading to the founding—except the personal experiences leading to his or her own decision to become a student here.

PART TWO will focus on my continuing relationship with the Law School. Since graduating 39 years ago and all during the intense professional experiences in those years, I have been in a more or less close orbit around the Law School, and it has always been in my thoughts and close to my heart.

PART THREE is Elder Dallin H. Oaks's perspective of the founding and mission of the Law School from his talk given at the Founders Day dinner in August 2012 and published in the *Clark Memorandum* in spring 2013.¹ Elder Oaks, one of the four or five most important actors in the founding of the Law School, recounted the founding and its unfolding meaning. Central to his 2012 talk, titled "Unfolding in Time," was a sentence from his August 1973 talk at the ceremony opening the J. Reuben Clark Law School: "The special mission of this law school and its graduates will unfold in time."²

I am not here to state or define the Law School's mission or even to suggest what some of its originating purposes might be. I am not enabled by position or authority to do that. I am here to urge the importance of everyone connected to the Law School—especially you students—seriously considering and seriously thinking deeply about "the special mission of this law school and its graduates."

I have six ideas to share with you. I like the number six; it precludes folks from saying, "You can count Stewart's ideas on one hand."

① The Lord caused the creation of this law school.

② He has always had serious purposes for this law school.

③ Those serious purposes—this school's special mission—will indeed unfold in time.

④ That special mission belongs to and encompasses in an indivisible way both the Law School and its graduates.

⑤ The Law School will fail to fulfill that special mission—the whole enterprise will be a bust—if its stewards, most importantly you as students now and as graduates hereafter, do not really strive to understand and achieve it.

⑥ The unfolding of the most important and serious purposes comprising that special mission is yet ahead, and your stewardship is crucial to that unfolding.



The Lord caused the creation of this law school.

I will mention a couple of evidences, the first of which, although consisting of a negative, seems to me to be powerful. It is that most all of the key mortal actors initially opposed the creation of the Law School. Elder Oaks collects the accounts in his 2012 talk. So if mortals did not like the idea of the Law School and did not want it, who did? Elder Oaks recalls, "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,"³ that is, those chosen by the Lord to receive and act on His will and word. Among the affirmative evidences are the miracles that only the Lord could have wrought and which I put into three categories.

The first I call *the miracles of recruitment*. These miracles occurred in private, but their dramatic effects were very public. What occurred in private was that the Spirit of the Lord revealed to one individual after another that the Lord wanted

him or her to forego impressive professional opportunities—the kind the world lusts after—and instead go to a new and unaccredited law school with zero professional stature situated in an obscure corner

of America's Great Basin. The dramatic public effect was that these individuals did just that. Perhaps the best-known example is the University of Michigan Law School's Carl Hawkins—a miracle touched on a bit in Elder Oaks's 2012 talk. Numerically, most of these sacred experiences happened to those who became students, that group that Elder Oaks described as

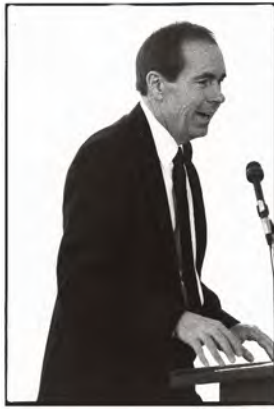
*more than a hundred extraordinarily well-qualified young men and women who could have been admitted to many first-class established law schools [and who] took the breath-taking risk of enrolling at this new one, thereby committing their careers before they began.*⁴

The second category I call *the miracles of performance and achievement*. Some may be disinclined to accept as miracles what I will list here, arguing that if you pull together enough bright, ambitious people and other resources and add a dash of religious zeal, you can naturally expect some pretty impressive performances and achievements. My counter to this naturalistic explanation is an event so beyond the pale of worldly ways as to expose that explanation as limp and even silly and then a suggestion that one look on the other events of performance and achievement with eyes able to discern heavenly as well as worldly doings.

Rex E. Lee was a soul raised up and prepared to be the founding dean of this law school. What he was and the marriage between what he was and this law school's founding amount to a great miracle, although not the beyond-the-pale miracle I am about to describe. It is hard, maybe impossible, for you to understand the awe and admiration and love for Rex that grew in the early students and that they carry inside themselves to this day 40 years later and 20 years after his death. One of his extraordinary but

This address was a BYU Alumni Achievement Award lecture given during Homecoming at the Law School on September 10, 2015.

thoroughly necessary traits was his audacity as an advocate. He could persuade an Arab to buy sand and an Eskimo to buy ice, and he directed that audacity at every well-qualified prospective law student who came



Rex E. Lee

on his wide-sweeping radar screen. History confirms that, in his recruiting for the charter class, he promised more than a small number of prospective students that, if he or she came to the new law school, he or she would certainly become the editor in chief of the law review.

Only once did his audacity fail. In September 1972 he met with two prospective students with high credentials and did the full sales pitch, which he pulled off with complete aplomb and mesmerizing effect. But then one of them said with earnest, albeit foolish, enthusiasm: “I have thought it would be neat, a great thing, to get to be a Supreme Court law clerk like you were and like Dallin Oaks was. How about that if I become a student here?” The audacity drained out of Rex like the air out of an untied balloon. He seemed to get smaller physically. He spoke in a different and much meeker voice words to the effect that such an opportunity would not really be in the cards for a student of this new law school. But he regained his verve quickly and went on to spin out for the two other visions and promises bearing at least some faint odor of plausibility. And he never gave up trying to recruit those two, who in the end became members of the charter class.

The point of this part of the story is that students at new law schools do not get to be Supreme Court law clerks. That is not how the world works. It is just not how the world works.

In December 1976 the Chief Justice of the United States took as one of his law clerks the earnest and foolishly enthusiastic guy whose question punctured Rex’s

audacity. One year later Justice Lewis Powell, perhaps the most respected member of the Court at that time, took another graduate of the Law School to be his law clerk. There has been a fairly steady parade of BYU Law School grads to the Supreme Court since.

As a close observer of this beyond-the-worldly-pale event, I reject unequivocally any naturalistic explanation that may be advanced for it. I likewise think little of those kinds of explanations for the other events and experiences that I would put in the category of miracles of performance and achievement: 1) the rapid accreditation of the Law School; 2) the high quality of the *BYU Law Review* from the very beginning, that is, when there were no third-year students on it; 3) Rex’s high-profile jobs at the Department of Justice in the Ford and then Reagan administrations and his rise to the top of the Supreme Court bar; 4) the astoundingly fast speed with which the nation’s top law firms became interested in and embraced the graduates of this law school, starting from virtually no interest at all in 1976; 5) the way the Law School was the catalyst for the J. Reuben Clark Law Society, with its phenomenal success and growth, now reaching across the world.

The third category I call *the miracles of timing*. Elder Oaks explains these in his 2012 talk.⁵ In the early 1970s the wisdom of man said that a later time would surely be better, would surely make more sense, but the foreknowledge of God said it had to be then. In hindsight, it is clear that the founding had to be then if it was to occur at all.

After witnessing all that I have witnessed, I am fully persuaded that the Lord caused the creation of the Law School and that His hand guided its launch.

2 The Lord has always had serious purposes for this law school.

God would not direct a great undertaking with no purpose. The notion of a purposeless God is nonsensical to me. As the scriptures and Church history teach, it is not so unusual that the Lord will direct the doing of something (the what) while delaying the full revelation of His serious purposes in that thing (the why).

3 Those serious purposes—what Elder Oaks called the Law School’s “special mission”—will indeed unfold in time.

This law school began on Monday, August 27, 1973, the first day that a professor began teaching law here to students. The law professor was Rex Lee. I was one of the law students. He taught about the equal protection clause of the Fourteenth Amendment to the federal Constitution.

But before the teaching began, there was a ceremony with prayers and talks. One of the speakers was Marion G. Romney of the First Presidency. Another was then BYU president Dallin H. Oaks, who in his talk spoke the words I quoted earlier: “The special mission of this law school and its graduates will unfold in time.” That sentence was an acknowledgement that the university’s leadership did not then know precisely, and probably even generally, what that special mission was. That sentence is also in prophetic form: it avers a then existing spiritual truth that the Law School had a special mission and that future events will make clear to us what that mission is. I believed that sentence when I heard it then, I have believed it during the many years since, and I believe it now—even though four decades later even Elder Oaks would speak in terms of “[w]hat [we] have . . . done that begins to define that [special] mission.”⁶ Notice the important word *begins*.

4 That special mission belongs to and encompasses in an indivisible way both the Law School and its graduates.

Oxford University is comprised of 38 colleges, each with its own way of doing things. For example, All Souls College, one of the oldest and richest, has no undergraduate students and only eight graduate students; my college, St. Anne’s, one of the youngest and poorest, ranks near the top for number of students—about 740—most of them undergraduates. Unlike All Souls College, the reason for St. Anne’s to exist and the measure of its value are very much tied up in its students, past and present and future. That is the way it is with this law school,

A DEEP SENSE OF MISSION

DEAN JAMES R. RASBAND

It is my pleasure to introduce to you Monte N. Stewart, who is a graduate of our 1976 charter class and who is the Alumni Achievement Award winner for 2015. He is an extraordinary attorney and an extraordinary person, and, in so many ways, he represents exactly who we want our graduates to be.

When this law school began, one of the first tasks of the first dean, Rex E. Lee, was to put together a great faculty and a great student body. This new law school was unaccredited at the beginning, meaning the graduates couldn't sit for a bar exam. Rex was an incredible recruiter, inspiring students to come to a law school that he promised would be accredited and that was going to be held in a small Catholic elementary school on 900 East, with a promise that someday it would have a building too. One of his early successes was recruiting a BYU student by the name of Monte Stewart, who was at the top of his class in the English Department, finishing summa cum laude with his English major. It really would be hard to overstate the risk Monte was taking. He could have gone anywhere in the country, but he chose to come here. And I think he came here because he saw something in the mission of this law school and wanted to be a part of it. That's partly why today, when he speaks about the mission of the Law School, I want to listen. He has a sense of history in our aspirations. He has actually lived that mission. I also want to listen because I know how much he loves this school.

We love that which we sacrifice for, and the truth is that the members of the first class of this law school feel a depth of commitment and affection for this institution because of the sacrifices they made. As dean, I see that manifested in their giving. To give you a sense of that time, when the charter class graduated, there were only six students who had firm job offers; Monte was one of them. Today that class has produced nine judges, three U.S. attorneys, three mayors, the attorney general of American Samoa, and distinguished practitioners all over the country. It really is an extraordinary group.

Monte was a star even among that class. He was number one in the class, he was the editor in chief of the law review, and he went on to clerk for J. Clifford Wallace in the Ninth Circuit and then for Chief Justice Warren Burger on the United States Supreme Court, where he really paved the way for an impressive

run of BYU graduates to clerk at the United States Supreme Court.

Following his clerkship with Chief Justice Burger, Monte headed off to a national law firm, Gibson, Dunn & Crutcher. Three years later he decided to return to his home state of Nevada, where he worked at a couple of firms and then started his own. Then in 1992 he was asked to serve as the United States attorney for the District of Nevada. The following year he was asked by the Church to serve as president of the Georgia Atlanta Mission, and he made that sacrifice. After returning from his mission, rather than going back to a firm, he became the founding director of our Rex E. Lee Advocacy Program. Almost before Monte settled into an academic life, Utah governor Mike Leavitt asked him to take over the state's legal efforts to block the storage of high-level nuclear waste on the Goshute Indian reservation out in Skull Valley. After his time with the Utah Attorney General's office, his heart went back to education, and he headed off for Oxford, where he earned a master of studies degree in legal research. Then, upon his return, he founded the Marriage Law Foundation here in Utah, and for the next four years he litigated constitutional questions in support of traditional marriage in trial and appellate courts and federal and state courts all around the country.

Since 2008 he has been the founding partner of Stewart Taylor & Morris, a firm in Boise, Idaho, where his practice focuses on constitutional law and complex civil litigation in both trial and appellate courts.

Over and over, Monte Stewart has been willing to place duty and ideals ahead of personal gain and comfort, so when he shares his thinking today about the Law School's mission, you'll be hearing from someone who means it—and who has lived it.



*Monte N. Stewart with
Dean James R. Rasband*

and Elder Oaks's sentence to which I keep returning recognizes as much; it speaks of the "special mission of this law school and its graduates"—language that rather clearly suggests a single and shared mission.

That idea in turn suggests to me stewardship, with each student and each graduate being a steward of the Law School and its destiny and bearing responsibility for the fulfillment of its special purposes. I have always felt strongly about this idea of stewardship relative to the Law School and hence think lowly of those who come here with a strictly "What's in it for me?" mind-set. Those motivated primarily by a desire to find the highest possible *U.S. News & World Report* ranking at the lowest possible tuition run the risk of living life blind to realities and opportunities and values of far greater worth.

5

The Law School will fail to fulfill its special mission if its stewards do not really strive to understand and achieve it.

The truth of this sentence seems to me to be both self-evident and important.

Most of the stewards whom I know well are striving to understand and achieve the Law School's special mission. To those whom I do not know well, all I am saying is that if you are not so striving, you should be, and if you are, great and keep it up!

In the spirit of that striving together, I want to say something about this law school vis-à-vis other law schools, and the starting place for that discussion is the concept of excellence. At the founding, there was much attention, concern, and talk—almost obsession—about this place being a first-class law school, meaning a school that lives the highest and best standards and practices of traditional legal education. There was a strong sense that whatever the Law School's special mission might be, the quality of excellence was absolutely necessary to fulfill that mission. I still firmly believe that.

Excellence in legal education and in the legal profession generally is the product of this formula: a high level of candlepower plus a high level of sustained hard work plus genuine commitment to the venerable



Looking from the northwest corner to the southeast, this photo from August 1973 shows the progress of the new BYU Law School building, constructed in the Wilkinson Center parking lot, where the old Wymount Village stood for years.

ideals of the profession: service, independence, zeal, competence, and integrity.

I have every reason to believe that you are fine in the categories of candlepower and commitment to professional ideals. At the founding, we students were handed the biography of J. Reuben Clark Jr. It traced President Clark's life through to his mid-30s, when he graduated from Columbia Law School.⁷ I read the subsequent volumes when they came out.⁸ President Clark worked prodigiously hard all his long life. He lived the formula for excellence in the legal world, including the component reading "a high level of sustained hard work." The other great and notable Mormon lawyers you may admire also lived that same formula. They took to heart the commandment "[s]ix days shalt thou labor."⁹

It is a lawyer's job to know the law. I do not diminish the importance of learning to think like a lawyer or of knowing how to find the law, but do not use attention to those two skill sets as justification for not learning the law. There is no adequate substitute for having that body of knowledge, and there is no getting it without sustained hard work—with now being the best time for you to do that work.

The quest for excellence at the founding understandably and, in my view, rightly led to close attention to and modeling after the nation's best law schools, especially the University of Chicago and the University of

Michigan. That close attention to and modeling after became a strength of this law school. But as Elder Oaks taught in a 1992 BYU talk, it is all too easy for our strengths to become our downfall.¹⁰ How could that be in this instance?

Let me try an extended analogy emerging from my experience in my beloved adopted state of Idaho. Picture two farming operations side by side. The one on the left is older, more established, and more renowned. It is owned and operated by a profit-driven, massive agribusiness corporation and uses all the best and newest technology and science. When you fly over the two operations, even as low as at crop-dusting height, the two look pretty much the same. That is because the one on the right, paying attention to and modeling after the one on the left, also strives to use all the best and newest technology and science.

But there is a profound difference between the two, invisible to the worldly observer. The one on the right is an LDS Church welfare farm, meaning it is part of the Lord's own vital endeavors, with purposes far different than the purposes of the farming operation on the left and with its stewards having motives for their work quite different than the motives of those running the adjoining operation. The world, of course, seeks to measure the "success" of the two farming operations using a specific metric of quality and quantity of output—of dollars

and cents and of worldly reputation—but I am quite sure the Lord is using a different metric for success of the farming operation that is a part of His latter-day work.

What happens to the welfare farm’s strength derived from its close attention to and modeling after the farming operation on the left when any of the following happens: the farming operation on the left starts devoting large acres to hops and barley for the nearby Anheuser-Busch brewery? Or to the even more lucrative crop of tobacco? Or to the extremely more lucrative crop of “medicinal” marijuana, with its wonderful aroma of compassionate humanitarian service and enhanced liberty? To achieve success as measured by worldly metrics or even just to protect their hard-won reputation as smart farming operators, do the welfare farm’s stewards put that farm on the same path?

I promised at the beginning that I would not set forth my views on what the Law School’s special mission might be, but I made no promise that I would not set forth my views on what the Law School’s special mission is not. It is not to be just another law school like those found all across the nation, even those of highest worldly reputation. The idea that the Lord would need or want or direct his servants to create such a school strikes me as supremely absurd. This law school can learn from and improve because of the best and most worthy features of other law schools, but there is surely a definite limit on how much it can rightly become like them, even those, or especially those, of highest renown. To go forward with the imitation game, with whatever motive, seems to me to be a sure way for this school to fail to achieve its special mission. Besides excellence, courageous independence of thought and action is a quality this school must have to truly succeed.

Now, let me make one more observation bearing on understanding and achieving the special mission, an observation that leads to my last point and the end of this talk. I think it would be a bad mistake to try to discern that mission or this school’s progress toward it with only worldly eyes. I think these are things that can be rightly and fully discerned only with spiritual eyes. In other words, what the world may view as a great achievement



may not really be for this school a mission-fulfilling achievement, and what the world may refuse to view as of any great value may be for this school fulfillment of one of its special purposes.

It may be difficult to connect the next sentence with what I have said before and will say after, but I say it anyway: I suggest that while you are here you value and form deep friendships with classmates and their spouses and nurture those friendships in the years to come.

6 **The unfolding of the most important and serious purposes comprising this school’s special mission is yet ahead, and your stewardship is crucial to that unfolding.**

I have no evidences to present in support of the first part of that sentence other than my own personal conviction, but it is a conviction based on numerous observations of the world over four decades, much hard thought, and spiritual experiences.

The second part of that sentence—“your stewardship is crucial to that unfolding”—seems to me to be another self-evident truth. After all, if the Law School’s special mission is to unfold in the coming years, by whom and through whom could that happen if not by and through you and your classmates?

Now, speaking to you as an individual, your stewardship is, I am sure, highly individualized and therefore distinct in important ways, perhaps even unique. Only you can find and fulfill it. But in the hope of being a bit helpful to you in that endeavor, I am going to mention four decisions crucial to my stewardship owed to this school and to Him who caused it to be created.

① In 1973, after being accepted by Harvard and Boalt Hall, I decided to go here and, further, to work and study very hard, to do my part to make this law school excellent, and to put out a high-quality law review.

② In 1981 I decided to leave a very prestigious law firm, Gibson, Dunn & Crutcher, which had just sent its senior partner to Washington, DC, as the attorney general, to go to Las Vegas to join a two-man firm of which the senior partner, my uncle, was under federal indictment¹¹ and which had no money.

③ In 1992 I decided to leave a lucrative private practice and engage in public-interest legal work.

④ In 2003 I decided to enlist for the duration of the war in that very small army defending against constitutional attacks on the social institution of man-woman marriage—which meant borrowing against my life insurance policy, going to Oxford without my family to study the issue for a year, and then, while engaged in the cause, having no certain income. The duration turned out to be 12 years.

How does one assess these decisions of mine—or the decisions that you have made or will make—relative to the idea of stewardship? Three ways appear to have a claim of validity. One is to measure the extent to which a decision was consistent with or ran counter to the operation of logic, rationality, and “sound thinking.” There is no avoiding the conclusion that all four of my decisions ran quite a bit counter; with each decision, people went out of their way to tell me I was crazy.

A second way is to measure the extent to which a decision subsequently experienced worldly vindication. The United States Supreme Court clerkship was ultimate worldly vindication of my 1973 decision, whereas my 2003 decision scored just the opposite: we lost the war—for now,

anyway—and I have been made to pay a price at the level of my private practice.

The third possible way is to consider the extent to which the Holy Spirit guided, directed, and confirmed a decision and the decision-maker then diligently implemented it.

My generation had a great dean and has done some good in the unfolding of this law school’s special mission. You have a great dean—I repeat that: you have a great dean—and a much bigger role in that great and important unfolding. God bless you in your stewardship. [cm](#)

NOTES

- 1 Dallin H. Oaks, *Unfolding in Time: The Founding and Mission of J. Reuben Clark Law School*, CLARK MEMORANDUM 14–21 (spring 2013).
- 2 DALLIN H. OAKS, ADDRESSES AT THE CEREMONY OPENING THE J. REUBEN CLARK LAW SCHOOL 4–5 (August 27, 1973); *see supra* note 1, at 18.
- 3 *Supra* note 1, at 17.
- 4 *Id.* at 18.
- 5 *See id.*
- 6 *Id.*
- 7 *See* DAVID H. YARN JR., *YOUNG REUBEN: THE EARLY LIFE OF J. REUBEN CLARK JR.* (1973).
- 8 *See* FRANK W. FOX, *J. REUBEN CLARK: THE PUBLIC YEARS* (Provo, Utah: BYU Press and Deseret Book, 1980); D. MICHAEL QUINN, *J. REUBEN CLARK: THE CHURCH YEARS* (Provo, Utah: BYU Press, 1983).
- 9 Exodus 20:9.
- 10 *See* Dallin H. Oaks, “Our Strengths Can Become Our Downfall,” address given at a Brigham Young University 18-stake fireside in Provo, Utah (June 7, 1992); *see also* Oaks, *Our Strengths Can Become Our Downfall*, *ENSIGN*, October 1994, available at <https://www.lds.org/ensign/1994/10/our-strengths-can-become-our-downfall>.
- 11 Subsequently, all charges were dismissed and he was fully vindicated.

ART CREDITS

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Page 24: Photo by Bradley Slade
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Page 27 (bottom right): Photo by John Snyder



The dedication of the BYU Law School, September 5, 1975.

