

## Judge Michael W. McConnell Speaks at Law School

Michael W. McConnell, a federal judge on the U.S. Court of Appeals for the 10th Circuit and a professor of constitutional law at the University of Utah College of Law, spoke to law students at the J. Reuben Clark Law School on January 17, 2008.

Judge McConnell spoke about the patriot Patrick Henry and his opposition to the ratification of the Constitution. Henry feared the day would come when the United States would be a militaristic empire with a too-powerful executive, leaving too little protection for civil liberties. At the Virginia ratifying convention Henry stated his view: "You are not to enquire how your trade may be increased nor how you are to become a great and powerful people, but how your liberties can be secured, for liberty ought to be the direct end of your government."

When reached late in the night by a messenger telling him that the Constitution had been ratified, Patrick Henry immediately went to the meeting place to address the group that still opposed the Constitution, establishing the first precedent in the American Constitutional tradition: "The question has been fully discussed and settled. As true and faithful republicans you had all better go home. Cherish the new Constitution. Give it fair play. Support it." Political opposition may be impassioned, but after speeches and arguments are made, no matter how strong the feelings that there is error or how grave the dangers to American liberty and democracy appear, when the matter has been fully discussed and settled by our fellow citizens, we go home.

Here are excerpts from the question-and-answer period that followed Judge McConnell's remarks.

**Would you say that it was more of the civic virtue of United States citizens than implicit words in the Constitution that led to the success of the early republic?**

Yes, I would say that. It was one of the most common and widely held views that you could not have a republic without public virtue. "Virtue" meant courage and self-sacrifice. I think the closest modern equivalent of this would be something like voluntary self-sacrifice in the public good.

How do you produce virtue? The founding generation thought the American people were especially blessed, but they also did not believe that would last forever. How do you inculcate virtue?

As one of the possible mechanisms for inculcating public virtue, Patrick Henry advocated a system at a local level in which everyone was required to contribute to the church of their choice. There wouldn't be an established church, but there would be multiple churches established. His proposal was rejected, and indeed the six or so states that had some form of establishment gradually disestablished them over the first generation or so in America. Nonetheless, religion has remained strong in America and, along with other voluntary associations, has played a major role in the formation of the national character.

Another important aspect of public virtue can be seen in our American military tradition. When our officer corps go to places like West Point, they learn that they are not supposed to be little Caesars, that the American military are servants of the people and not of their leaders.

And, of course, Patrick Henry was teaching a kind of public virtue when he told opponents of the

Constitution to go home when they had lost the fight in the ratifying convention. This is the public virtue of acceptance of the democratic rule, even when you aren't prevailing, and that's an important thing. That is the importance of concession speeches on election night. We remember the really gracious concession speeches, don't we? When politicians lose and seem to try to keep up the battle and try to undermine the person who's elected, we sort of recoil, don't we? We say, "This is not the occasion for that." Concession to the will of the majority is a kind of education in democratic public virtue that is really important and not seen in countries around the world.

**When there is an issue that is politically charged and it goes through the democratic process and my side loses, I find that I tend to continue being angry or wanting to fight against the ultimate result, or I turn to apathy. I'm curious about the application of Patrick Henry's message from what he said, that we should cherish the Constitution and go home. Yet at the same time, it seems that he continued to passionately fight against the aspects of what he didn't like in the Constitution for the rest of his life. So I'm wondering about my personal application of this message when I'm the loser. Should I cherish and accept the thing I don't like, or should I continue fighting against it through the democratic process?**

Don't suddenly stop believing in what you did before. That is not what our republicanism is all about. Republicanism, at its best, means that all of us, all citizens, think about and vote and urge what we believe to be in the public good. Public virtue, in part, means putting aside things that are merely in our private interest. You know, I may be a wheat farmer and profit by hav-



ing wheat subsidies, but are they really in the public interest?

But self-interest, as powerful as it is, is not the thing that most infects American politics. What I think most infects American politics today is an excessive partisan zeal, such that people often hope for not what they think is in the public interest, but rather what they think is going to advance their team and cause the other team to lose. We should really fight against that impulse. I think that it is wonderful to have people with different ideas about what promotes the public good, but I think that it is factionalism at its worst when people wish for things to become worse because they think that it will advance their cause.

I would also suggest that when you lose, you at least entertain the following thought and see if it could be even sincerely made. Say, "I think they are wrong, but I hope they are right." For instance, somebody proposes a national health care system that you think is a bad idea. You argue against it, you point out all the flaws that you think it's going to have, and you don't think it's going to work very well; but it is enacted. How about the next day just saying, "Well, I still have all the doubts that I had before, but I really do hope it's going to work." This leads to a different spirit of opposition.



**Kevin J. Worthen**  
**New University**  
**Advancement Vice**  
**President at BYU**

In June, BYU President Cecil O. Samuelson named Kevin J. Worthen new advancement vice president, effective September 1, 2008, and announced James D. Gordon III as interim dean of the Law School. Worthen will retain his faculty position at the Law School and will continue teaching as circumstances permit.

Of Gordon's appointment, Worthen said, "I have great confidence in the interim dean, Jim Gordon, who has an extraordinary mind and exceptional judgment. He has had an enormous positive impact on key decisions at the Law School, not only during the past four years as associate dean but for many years before that. He and those who will work with him are among the brightest, most talented people I know."



**James D. Gordon III**  
**Named Interim Dean**  
**of the Law School**

Gordon is the Marion B. and Rulon A. Earl Professor of Law. He received a JD from the University of California, Berkeley, and clerked for Judge Monroe G. McKay of the U.S. 10th Circuit Court of Appeals. He practiced with the law firm of Rooker, Larsen, Kimball & Parr in Salt Lake City and joined the Law School faculty in 1984. He served as associate academic vice president for faculty at BYU from 1996 to 2000. Gordon has served as the Law School's associate dean for faculty and curriculum since 2004. He has published in leading law reviews, including California, Cornell, Michigan, Stanford, Texas, UCLA, Vanderbilt, and Yale.

"I appreciate Jim Gordon's willingness to take on this new challenge. We are fortunate to be able to call upon one so able and

so well prepared as Jim to assume this responsibility," said John S. Tanner, BYU academic vice president. "I have full confidence in the ability of this new team to provide strong and wise leadership for the Law School through this transitional period."

Already, a search committee has begun the process of identifying a new dean. "This is a time of transition for the Law School, a time of challenges and opportunities," said Gordon. "Over the next several years a number of faculty members will retire, and we'll need to work hard to hire new faculty. Then we'll need to help the new faculty members develop into successful teachers and scholars. I'm optimistic about these efforts because we're building on a strong foundation."



**Katherine Pullins Looks**  
**Backward and Forward**

*After 20 years at the J. Reuben Clark Law School, Katherine Pullins retires. She answered questions about her work here and about what lies ahead.*

**How did you start working at the Law School?**

The month before I graduated from the Law School in 1988, the Career Services director retired, and I received a call from Assistant Dean Claude E. Zobell asking me to apply—something I had never considered. Dean Bruce C. Hafen's question "What if I promised you I'd give you every opportunity to put more heart into this operation?" triggered a spiritually seismic shift within me, and I enthusiastically became the new director. As I worked with students in Career Services, challenges in their lives would often surface. In an effort to assist these students, I learned about resources both on campus and in the community at large. Because I had been involved in extra- and co-curricular organizations during my time as a student, when questions came up about these groups, students often sought me out. Because I had just recently graduated, when students wanted

some advice on classes to take, my office was one of the stops they would make.

After two years, when Dean H. Reese Hansen and I assessed how my time was being allocated, we could see that the student affairs part of the job description was developing into what could—and should—be a full-time job. At that point, we hired a Career Services director, and I became the dean of Student Relations.

#### What will you miss the most in leaving the Law School?

I will miss the rhythm of the school year and the sense of being a part of something that the hand of the Lord is guiding. Most of all I'll miss my association with the amazing individuals whom I have had the privilege of knowing because of our mutual ties to the Law School: students, graduates, and my colleagues. Since it was the promptings and stirrings of my heart that brought me to this work in the beginning, I've never thought of my work here as just a job. I've felt more of a sense of calling, of mission. Undoubtedly, I will leave a large part of my heart here at the J. Reuben Clark Law School.

#### What are your plans for the future?

All of my sons and their families, including four perfect granddaughters, now live out of state. So, I plan a flurry of traveling this fall to visit family members. Afterwards, I'd like to begin a phase that's a throwback to my prelaw English-major days. In today's vernacular, you might call it *So You Think You Can Write?* I've always said that I have at least four books in me, and I plan to start with a series of children's books.



#### Douglas Floyd Retires

After 28 years teaching at the J. Reuben Clark Law School, Douglas Floyd, Francis R. Kirkham Professor of Law, retired this summer. In his nearly three decades at the Law School, Professor Floyd has been an outstanding teacher who has brought humor, compassion, a love of learning, and scholarly insights to the task of educating law students. New students soon realized that Floyd thought deeply about legal ideas and concepts, and his

enthusiasm proved contagious. He recently received the Karl G. Maeser Excellence in Teaching Award, the university's highest award for teaching, which is a well-deserved recognition of the impact Floyd has had on the lives of thousands of students.

He has published thoughtful and well-crafted articles in highly regarded law reviews and is the coauthor of an important treatise on private antitrust actions. In the next year he will be working to complete two books.



THOMAS R. LEE



KIF AUGUSTINE-ADAMS



WENDY C. ARCHIBALD

#### New Associate Deans and New Assistant Dean at the Law School

Thomas R. Lee has been named the new associate dean for faculty and curriculum at the Law School, assuming the duties of James D. Gordon III, who will serve as interim dean.

"I appreciate Tom's willingness to serve," Jim Gordon said. "He is an excellent teacher and scholar and has sound academic judgment."

Lee graduated from the University of Chicago Law School, and he clerked for Judge J. Harvie Wilkinson III of the U.S. Fourth Circuit Court of Appeals and for Justice Clarence Thomas of the U.S. Supreme Court. He then practiced with the law firm of Parr, Waddoups, Brown, Gee & Loveless in Salt Lake City before joining the Law School faculty in 1997.

He served as deputy assistant attorney general in the Civil Division of the U.S. Department of Justice in 2004-05. He has published widely, including articles on trademark and copyright law.

Lee will join Kif Augustine-Adams, associate dean for Research and Academic Affairs at the Law School, who took over James R. Rasband's duties earlier this year when he assumed a university leadership position as associate academic vice president for faculty.

Augustine-Adams' primary responsibilities include faculty scholarship, student academic matters, and cocurricular organizations. She received her juris doctorate from Harvard Law School in 1992 and then practiced law with the firm of Covington & Burling in

Washington, D.C., before joining the faculty at the J. Reuben Clark Law School in 1995. She was a visiting professor at Boston College Law School for the 2007-2008 academic year and returned to BYU Law School this fall semester. Her principal research interests include citizenship, immigration, and gender issues. Her work, published in both English and Spanish, has appeared in numerous journals.

Wendy C. Archibald, '93, has been named the new assistant dean for students and internal relations at the Law School. She assumed her new duties in August, upon the retirement of Assistant Dean Katherine Pullins. Archibald is a partner in the law firm of Archibald Mahoney and has worked as a staff attorney in Congress. She is a past president of the BYU Law School Alumni Association.

**Six New Mission Presidents Are BYU Law Alumni**

Six BYU Law School alumni began callings as mission presidents on July 1, 2008.

Eric M. Jackson, '78, joined by his wife, Saurell, presides over the California San Jose Mission. Born in California, President Jackson served a mission as a young elder in the Arizona Temple Mission. He and Saurell live in Mesa, Arizona, where he is an attorney and partner at Jackson White. The Jacksons have six children.

Kenneth W. Jennings Jr., '78, of Alpine, Utah, presides over the Korea Busan Mission with his wife, Catherine. He previously spent years in Korea as a young missionary and later with his young family. An attorney and partner at Colter Jennings Attorneys, he and his wife are the parents of four children, one of whom is game show champion Ken W. Jennings III.

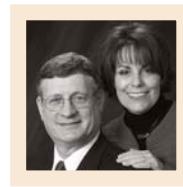
Robert G. Condie, '79, an attorney in Kirkland, Washington, is the new mission president of

the Germany Munich/Austria Mission, an area in which he served as a young missionary. He and his wife, Linda, are the parents of five children.

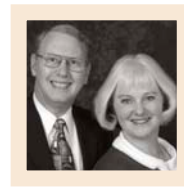
Melvin B. Sabey, '79, accompanied by his wife, Sondra, presides over the Ghana Cape Coast Mission. As a young man, President Sabey served a mission in the England North Mission. Now an attorney in Littleton, Colorado, he and his wife have six children.

Reid Tateoka, '81, is the new mission president of the Japan Sendai Mission, where he served a mission as a young man. His wife, Shauna, joins him. An attorney and the president of McKay, Burton & Thurman in Salt Lake City, he and his wife are the parents of three children.

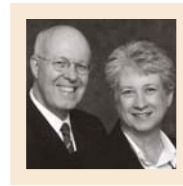
Byron L. Smith, '87, is joined by his wife, Bonnie, as he presides over the Ghana Accra Mission. From South Jordan, Utah, he is a retired area manager of TruGreen Chemlawn. He served a mission in the North Central States Mission. The Smiths have five children.



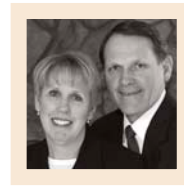
PRESIDENT AND SISTER  
ERIC M. JACKSON



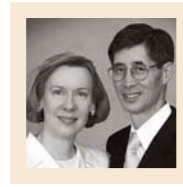
PRESIDENT AND SISTER  
KENNETH W. JENNINGS



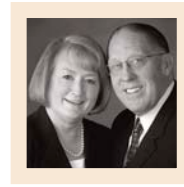
PRESIDENT AND SISTER  
ROBERT G. CONDIE



PRESIDENT AND SISTER  
MELVIN B. SABEY



PRESIDENT AND SISTER  
REID TATEOKA



PRESIDENT AND SISTER  
BYRON L. SMITH



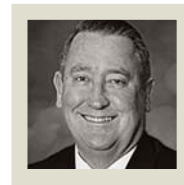
LAWRENCE E. CORBRIDGE



JAMES J. HAMULA



TAD R. CALLISTER



JAMES B. GIBSON

**Four New General Authorities**

Two J. Reuben Clark Law School alumni were called as members of the First Quorum of the Seventy in April 2008.

Lawrence E. Corbridge, '76, is a shareholder and senior attorney at Corbridge Baird & Christensen in Salt Lake City. Elder Corbridge's many Church callings have included president of the Chile Santiago North Mission. He and his wife, Jacquelyn, are the parents of five children.

James J. Hamula, '85, is an attorney and partner at Gallagher & Kennedy, PA, in Phoenix, Arizona. At the time of his call, Elder Hamula was serving as a member of the Sixth Quorum of the Seventy in the North American Southwest Area. He has also served as president of the Washington, D.C., South Mission. He and his wife, Joyce, have six children.

Two Law Society members also were called as General Authorities in April.

Tad R. Callister, JD, UCLA, '71, serves as a member of the Second Quorum of the Seventy. Previously, he was the president of the Canada Toronto East Mission. He served as a member of the Fifth Quorum of the Seventy, North America West Area, from 2000 to 2005. In addition to his JD degree, Elder Callister holds a BS degree in accounting from BYU and an LLM degree in tax law from New York University. An attorney practicing in California, he and his wife, Kathryn, have six children.

James B. Gibson, JD, California Western School of Law, '75, is an Area Seventy serving in the North American Southwest Area. He has been the mayor of Henderson, Nevada, since May 1997. He received a bachelor's degree at BYU in 1972 before earning his law degree. Elder Gibson and his wife, Lora, are the parents of six children. Their oldest son, Brin, graduated from the BYU Law School this past spring, and a son-in-law now attends the Law School.

## Nearon Donates Paintings to Center for Law and Religion

Linda Nearon is a woman of many talents, not the least of which is her capacity to capture beauty and meaning in her nature paintings. Spending summers in the Wasatch Mountains as a young girl and later living in California's northern climes, Linda developed a love for nature that she desired to capture. "I have a passion to paint these scenes and preserve their memories," she says.

Linda recently won the prestigious Merit Award in the Salon International 2008 art competition for her stunning painting *Morning Song*. She has won many other awards for her paintings through the years. A list of these awards and some of her impressive paintings can be viewed on her Web site.

Recently, the International Center for Law and Religion at the J. Reuben Clark Law School has been the beneficiary of Linda's talents. She has donated a total of four paintings to the center depicting experiences that she and her husband, David, have had as members of the center's International Advisory Council. These paintings show buildings in Budapest, Hungary, and Kiev, Ukraine, where she and David accompanied the center as it participated in conferences on religious freedom. She has also contributed her painting *The Treasury*, of the famous ancient structure in Petra, Jordan, in honor of Judge Abdul Karim M. Pharaon and other Jordanian friends of the center. Finally, *Color of Fall*, a beautiful depiction of Guardsman's

Pass in the Wasatch Mountains, now hangs in the fourth floor reading room. This painting is reminiscent of Linda's participation in the center's Annual Law and Religion Symposium, held each October during general conference weekend.

"Linda and David have been wonderful supporters of the center in every way imaginable. Along with their generous financial support, they have hosted guests from all parts of the world at our annual symposia and have traveled with the center to many countries in Europe and Asia. For me, Linda's paintings bring a sacred honor to their consecrated service," says Robert Smith, managing director of the center.

Linda is now accompanying her husband, David, in Moscow, Russia, where he recently accepted a call to serve for 18 months as associate area legal



*The Treasury (Petra)* honors Jordanian friends of the Center for Law and Religion.

counsel for the Church. They are the parents of four children and 10 grandchildren.

The Law School is grateful for Linda's many talents, which it expects she will use to capture many beautiful scenes in Russia.

## Annual Arts Night at the Law School

Each spring, law students with musical backgrounds have the opportunity to share their talents with the Law School community in an evening recital. Sponsored by the Sports and Entertainment Law Society, law student performers play instruments and sing, many using the grand piano donated to the Howard W. Hunter Law Library by Constance Lundberg and Boyd Erickson following the remodeling of the library in 1997.



LEFT: *Naseem Nixon*, '09;  
BELOW: *Mike Allongo*, '10.



ABOVE: *Professor Kristin Gerdy*, '95 (left);  
*Kari Baardson*, '08 (right).  
LEFT: *Jennifer Carlquist*, '08.

## As Lawyers Face Retirement

by J. Robert Nelson

JD, UCLA, '71, of Counsel VanCott, Bagley, Cornwall & McCarthy.

THE FOCUS OF THIS SHORT PIECE IS A FACT ALMOST AS INEVITABLE AS DEATH AND TAXES: retirement. While a few will literally work until they drop, most of us at some point will face retirement. Indeed, with the aging of the baby-boom generation, the numbers confronting this “inevitability” will only increase.

Most of us would acknowledge at least some trepidation at the prospect of leaving what has filled our time and defined our lives for so many years. The horror stories—and there clearly are some—probably heighten the anxiety. In my case, the negative anecdotes begin with an associate who, probably by coincidence, died soon after leaving his life-long job. While that may be extreme, there are numerous tales of the difficulties attendant to being put out to pasture. Typical is the experience of an executive of a large Las Vegas hotel/casino. His retirement marked for him a dramatic change. The things that for so many years had defined his professional life were gone overnight. There were no more telephone calls and interruptions; neither were there problems to address, questions to answer, directions to give, nor authorizations to provide. In place of the hectic pace, there was only a profound quiet. The contrast was so wrenching that, in short order, this executive came out of his retirement and returned to the business world that he knew.

Some in our profession find the transition that we know as retirement particularly difficult. If not already genetically programmed, most of us quickly adapt to a professional life marked by energy and activity. The prospect of sedentary retirement years does not always resonate with the type A personalities drawn to our profession. Then there is the singular focus that most of us apply to our work. While crucial to professional success, that focus may limit the development of interests that can have a cushioning effect in retirement. Finally, some counselors have suggested that a disproportionate number of us are loners whose social interaction tends not to go beyond our business contacts. Eliminate those contacts at retirement, the thinking goes, and you have the makings of loneliness. With all of this, it is not surprising that retirement can bring with it concerns about inactivity and disengagement. After all, we leave behind a profession that has defined and provided structure to our lives. Not only that—for many of us, our law firms have functioned as a support group and provided much of our social interaction. That changes when we walk out the door for the last time.

In terms of retirement, there is obvious danger in generalizing. Our paths will not all be the same. Some will take deep satisfaction from a life of golf, family affairs, and social involvements. For them the law quickly becomes a distant memory. Others will choose continued professional involvement as senior counsel to firms that value the experience and wisdom that can come with age. Some will maintain their tie to the profession as judges, mediators, and arbitrators. Still others will teach the next generation of lawyers. Then there are those who will fill their time with service including Church assignments and opportunities.

The truth is that most of us will face at least a few moments when thoughts will turn to retirement and how we will define and find satisfaction in our waning years. While working, most of us have developed professional relationships and honed a particular set of skills. They include the ability to spot issues, to express ourselves effectively, to advocate positions, and to solve problems. Those skills and our professional relationships have permitted us to function effectively and experience the satisfaction of jobs well done. There is no reason to assume that all that must end at retirement. There are ample opportunities to use those very skills and contacts in a variety of new and equally interesting settings. By so doing, we can remain active and engaged and continue to experience in retirement the same satisfaction that we did during our professional years.

The *Clark Memorandum* welcomes the submission of short essays and anecdotes from its readers. Send your short article (750 words or less) for “Life in the Law” to wisej@lawgate.byu.edu.