

Spring 1986

J. Reuben Clark Memorandum: Spring 1986

J. Reuben Clark Law School

J. Reuben Clark Law Society

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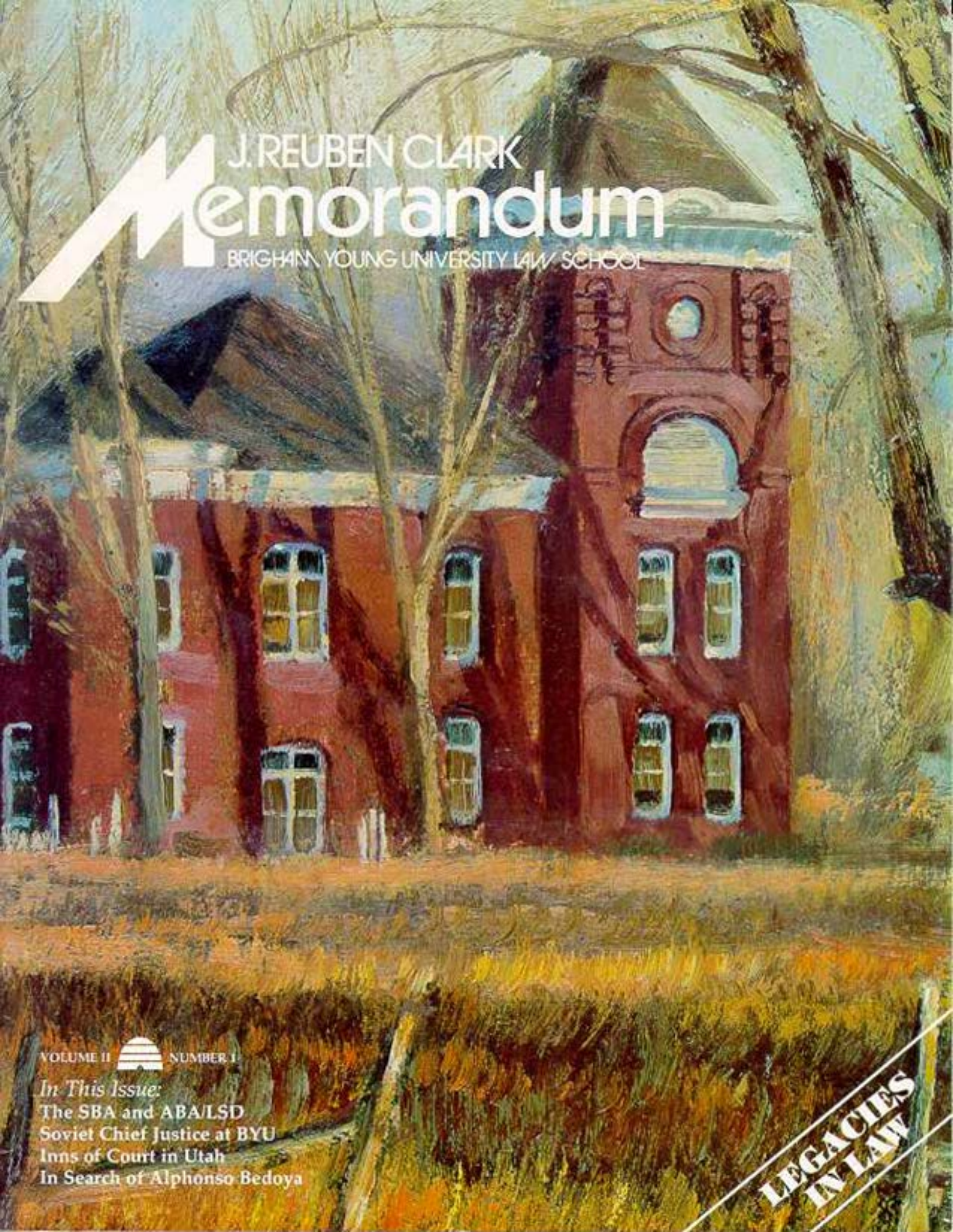
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J. REUBEN CLARK Memorandum

BRIGHAM YOUNG UNIVERSITY LAW SCHOOL

VOLUME II  NUMBER 1

In This Issue:

The SBA and ABA/LSD

Soviet Chief Justice at BYU

Inns of Court in Utah

In Search of Alphonso Bedoya

LEGACIES
IN LAW

“We think it more commendable to get up at 5:00 a.m. to write a bad book than to get up at nine o’clock to write a good one — that is pure zeal that tends to breed a race of insufferable, self-righteous prigs and barren minds.”

—Hugh Nibley,
Zeal Without Knowledge

In this issue . . .

Looking at the history of the L.D.S. Church this sesquicentennial year, it is not surprising to find many illustrious contributors to our legal heritage. Franklin Snyder Richards was one of many early Mormon attorneys who distinguished himself at the bar, serving for over half a century as General Counsel of the Church. Also, in what may prove to be one of the only such visits ever made, Soviet Justice Smirnov’s visit to B.Y.U. in October provided many interesting comments on the Soviet judicial system. Denver Snuffer’s enlightening articles on the identity of Alphonso Bedoya and the art of interviewing provide a lighter insight into the realities of JRCLS. The SBA has also been busy this year establishing a reputation for activity unequaled by previous classes. Finally, the appearance of the Inns of Court concept in Utah marks a new era of cooperation between the Bench and Bar.



Franklin S. Richards 1849-1934

J. REUBEN CLARK

Memorandum

BRIGHAM YOUNG UNIVERSITY LAW SCHOOL

CLARK MEMORANDUM

Volume II
Number 1

J. Reuben Clark
Law School
Brigham Young
University
Provo, Utah
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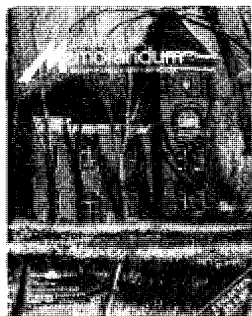
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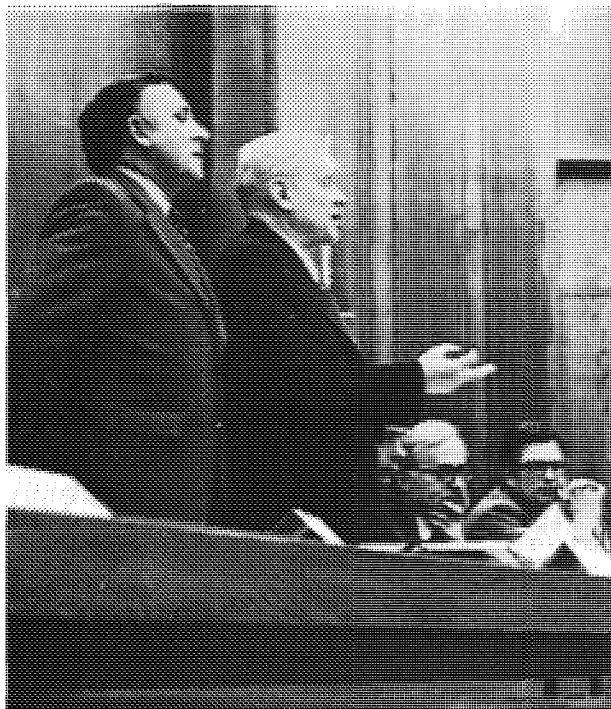


Cover
Piute County Court House,
oil by Valoy Eaton; courtesy
J. Reuben Clark Law School

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Chief Justice Smirnov Visits JRCLS

"My dear colleagues, irrespective of your age, for we are colleagues! Time has but one capacity, it moves only forward. It is very, very good that, university wide, this is the first such lecture. It is with less pleasure that I recall my age at the moment, but nothing can be done; time is moving!"

I must say that I am especially pleased to have this meeting with you. You have a university built up similar to higher educational establishments and schools of law in

Editors Note:

Last October, in an unprecedented visit by several of the highest judicial officials in the Soviet Union to the BYU Campus, Chief Justice Leo Nicholavich Smirnov of the Soviet Supreme Court addressed the law students in the Moot Court Room. In reviewing the video tapes made during that presentation, several difficulties were encountered in preparing a transcript for publication. Much of the translator's dialogue was choppy and contained only fragmented statements. Other comments during the simultaneous Russian/English delivery were virtually unintelligible. What follows, (so far as it is translated correctly) is a partially edited version of Mr. Chief Justice Smirnov's remarks. The editor accepts sole responsibility for glaring inaccuracies, and invites the attention of those seeking further light and knowledge to video tape #70 in the audio-visual office.

other countries. I know that you approach your studies very seriously. I tell you that our profession is such that it can be treated either very seriously, or you should quit this job and go out into the crowds, or clean streets. Your university has a good reputation in the United States, and I want to tell you it is nice to meet you.

We have 29 questions (previously submitted) and we have little time at our disposal. We decided it would take about 24 hours to respond to all of them. I will pick out those questions which I feel have been most correctly formulated.

(Question #1) In the early days of the Soviet era, there was an understandable mistrust of the dead and unhealing hand of the law. Then a stream of decisions were rendered with more attention to then current foreign policy and administrative pressures than to natural readings of law and juridical precedence. We understand that since 1922 there has been more support for greater predictability and fairness of a rule of law, and that the legal profession within the USSR has enjoyed increasing status and independence. Is this view basically correct? If so can you give us illustrative examples?

Until 1953 there existed nothing. Some decisions were adopted, and they

formed the basis of law. Then something happened in 1953 and lawyers started to take their place. How this process will go further, the author of the question (above) doesn't know. The questions we have gathered, these were the questions that were of great value for the great founder of our country, Vladimir Ilyich Lenin. From the early days of soviet power he posed the question of, "What to be guided by?" Old laws? Could the old laws be taken intact completely? Probably not.

During the first days of soviet power, Lenin put forward the task to crush down

"In those extremely difficult years of our country; years of civil war, the years of intervention, the years of hunger, the years of disorder in the economy, Lenin insisted on creating new legislation."

completely the old judicial system; from the Senate, which was the Supreme Court of Tsarist Russia, down to the smallest cells which were the local courts. There were a lot of arguments about that time

Many of the members of our revolutionary movement, the Bolsheviks, told Lenin, "let us break down the Senate, let us think about the possibility of breaking down the old policies, but we will not touch anything in law, we will leave everything (the laws) intact. Because (otherwise) that may mean that anarchy and absence of law will begin." Lenin continued to insist on this point of view, and the old judicial system was broken from top to bottom.

Then of course extraordinary difficulties arose. There were other difficulties too, difficulties of legislation. I presume many of you remember the old world where lawyers made the norms of legislation. He would say that draft legislation should be very thoroughly prepared. It should be processed and worked out at the beginning because badly prepared drafts, after becoming law, begin slapping at the face of those who made this law. In those extremely difficult years of our country, years of civil war, the years of

"The Soviet state and all of its bodies function on the basis of socialist law, insure the maintenance of law and order, and safeguards the interests of society and the rights and freedoms of citizens. State organizations, public organizations, and officials shall observe the Constitution of the USSR and Soviet laws."

intervention, the years of hunger, the years of disorder in the economy, Lenin insisted on creating new legislation. It was created during a comparatively brief period of time. Those Codes appeared in 1922, and they were tested by life. Lenin said that the basis of judicial activity must be obligatory fulfillment and mandatory observation of the laws unconditionally. But he used to say, "the judges are local people!" They would individualize the responsibility of a defendant, and this would give (the judge) the possibility to make the just decisions. This is from 1922 to 1924.

In 1926, a revised code was adopted, but there never existed such a state (of disorder). Justice in the Soviet Union was in darkness. An understanding Russian poet used to say, "to shout 'safe!' when you got into the fog, you don't have to be too clever to do that." We were never in



such a state! We're not in such a state now. This (pointing) is the main law of our country, the Constitution recently adopted in 1977. You may know the first Constitution was in 1918, 1924 was the second Constitution, 1936 the third. This is the Constitution of 1977. When we speak about all of the administrative bodies, all organizations, all institutions, they must obey the Constitution.

The Soviet state and all of its bodies function on the basis of socialist law, insure the maintenance of law and order, and safeguards the interests of society and the rights and freedoms of citizens. State organizations, public organizations, and officials shall observe the Constitution of the USSR and Soviet laws. So its basic force predetermines any state or party organizations in our country. This is socialist law, the basis of which is our Constitution, The Constitution of the USSR.

There are many questions here concerned with the Constitution. There is one for example "is there any collision between the Constitution and the laws of the Soviet Union?" Here we must say that the unconditional law is the Constitution. If a law contradicts the Constitution, it must be eliminated. I'm asked, "who does that?" This is done by the Supreme Soviet of the USSR. We stand on the position of legal interpretation of law. The Procurator-General and constituent departments all have the power of what we call legislative initiative. We attract the attention of that legislative body to the fact that a certain law contradicts a provision of the Constitution. Then our presentation is analyzed; sometimes it is agreeable, sometimes it is not agreeable, but that is a matter for the Supreme Soviet. At this stage we must end discussion. After some time,

point or question may be raised again by the Supreme Court of the USSR, the Procurator-General, a member of the parliamentary body, or a member of the Supreme Soviet. The Chief Justice is a member of the Supreme Soviet, and as an individual member of the Supreme Soviet, he can raise the question. What is called a Constitutional court, we are not that kind of court. Though during the first years of its existence the Supreme Court of the USSR fulfilled those functions.

Now about the Supreme Court itself, and what is that? My friends, it is not a big court, it's a small court. The session of the Supreme Soviet of the USSR elects for a period of five years nineteen members of the Supreme Court including the chairman, two deputy chairmen, and three branches that settle matters on criminal, civil, and military matters.

The Supreme Court of the USSR (in addition to the 19 elected justices) includes 15 more men. These are the Chairmen of the Supreme Courts of the constituent republics. Mr. Justice Karamazov is at this same time the Chief Justice of the Supreme Court of the Georgian Republic and a member of the Supreme Court of the USSR. Mr. Justice Smirnov (translator speaking in third person) for ten years was the Chief Justice of the Supreme Court of the Russian Federation. Of course that is a big republic with a big population, 132 million in population; and he was a member of the Supreme Court of the USSR. This participation of the Chief Jus-





tices of the republics in the Supreme Court of the USSR gives us much, because we have here real experience, and we have learned to process and put aside the mistakes of the lower courts in our hearings of the Supreme Court

I want to pay attention to the application of the law, that is the third item I want to do here. The matter is that some (political) scientist somewhere wanted to give to

"Let me say finally, when we were coming to your university, I was very favorably impressed that at your university you don't drink and you don't smoke. You agree not to drink and not to smoke while you are attending; this is extremely important."

us, to give to the courts, legislative powers. As a plenary session, we would (be able to) get together and discuss, and then publish a law. That would have been very dangerous because that would have created an absence of law. The matter is the right application (of law), that is our task.

We have a special Department of Generalization and Analysis of the Judicial Practice consisting of experienced lawyers and members of the Supreme Courts from the Republics. They follow and discuss the documents that we adopt and those explanations of how to apply them. We have one more branch which is the Scientific and Consultive Council consisting of 40 leading theoreticians and practicing lawyers, which also takes part in the discussions. Some of the points you hear are being expressed by outstanding lawyers, or by the single fact that this point of view they express is their scientific dissertation. They stand for this point of view or defend this dissertation because

it is theirs up to the end of their lives. The work of this council is a great help to us. These are known people, intelligent people, great experts who know the terminology and the language of the law, who know very well the juridical language, not as other lawyers who speak nothing but the language of a dead fish!

We have limited the competence of the Supreme Court, we cannot hear all of the cases. We hear either the cases that were presented to the Supreme Courts of the constituent Republics as original cases. We take them by way of supervision. Another group of cases are the cases that have gone through all the instances from the very lowest courts to the plenary session of the Supreme Court of the USSR. That is why sometimes in the plenary sessions of the Supreme Court there will be a case seemingly very small. The press in the Soviet Union reported that the Supreme Court had taken up the case of a lady who was fired from her job and moved out of her apartment. We restored her in her job and gave her back her apartment, but that was not available so

"I was amused by another figure, the great American writer, Mark Twain, who said there are three types of lies: simple lies, the violation of oath, and statistics, the latter being the worst kind. I remember that because I had to go two times through the statistical data."

we arranged for a better one. After six months, she retired. In the law of our country, we do not consider these such a small matter, because sometimes on these small cases we make big conclusions. You have precedence here, but we do not have that. Our decisions serve as examples for the lower courts who must take them. The

publication of our Supreme Court, the reports, is not an adventure book. It is a pocket size series and has a circulation of 130,000 copies. All of the law magazines published by the government are very important as a second source.

The last thing I want to say, some lawyers have the impression that we do nothing but hear cases in the first instance. But the Supreme Court hears such cases only when they are very serious. This is something that is qualified in the legislation about the Supreme Court as cases of superior state importance. The less cases we have, the better it is, because usually they involve very grave crimes. For example, such cases as theft in big amounts. But quite recently we had a peculiar case, a case I had never seen before. That was a case of three lawyers that got together and created an underground illegal enterprise in the production of fur coats from beaver and expensive furs. For a year and a half they happened to steal 1 1/2 million rubles. We did not take it because still we thought it was not so significant, but we changed that. It seemed dangerous to us; that was quite a new specialization of lawyers, specializing in furs, that seemed a new step in the profession.

The most important task to do is to know what is going on judicially between the Baltic and the Pacific Coast. There is 11,000 km if you measure from the Arctic Ocean to the Pamir Mountain Range in Central Asia. To be knowledgeable of what is happening and the ability to extract at a given moment an explanation that will deal with the drawbacks of a case, that is what is most important. That covers the main functions of the Supreme Court of the USSR.

Dear colleagues, in every country there exists this evil. In some ways we are in a better position because we don't have drugs or narcotics, bad things like heroin. I have just published a book about the

Tokyo Trials of the war criminals I was a participant; where such matters were known as to what makes a drug addict. We have one drug in our country known as marijuana. In your country it is hashish, in the orient it is also cannabis. In prisons of our country it is called grass simply. I know that some of the jurists want to make smoking marijuana legal. What can be done about the fact that smoking it has very grave affects on young people. Besides marijuana, we don't have anything except a negligible number who would take amphetamines. They're negligible. Some might get opium. Our young people have come to know LSD, and that is an evil too.

We are worried by another matter; we are worried about vodka! I checked the judicial statistics. 52% of all criminal cases were done in a state of drunkenness. It goes without saying that such greater crimes as murder, etc. about 80% of such crimes are committed in a state of drunkenness. Those who have gone through what a very famous lawyer has referred to as our prison universities, these persons have learned that killing a wife out of jealousy will not be considered a great crime. So then when he asks his wife for more money to get drunk, and she refuses, he will kill her and say that it was out of jealousy and avoid the penalty for the grave crime he has committed.

Let me say finally, when we were coming to your university, I was very favorably impressed that at your university you don't drink and you don't smoke. You agree not to drink and not to smoke

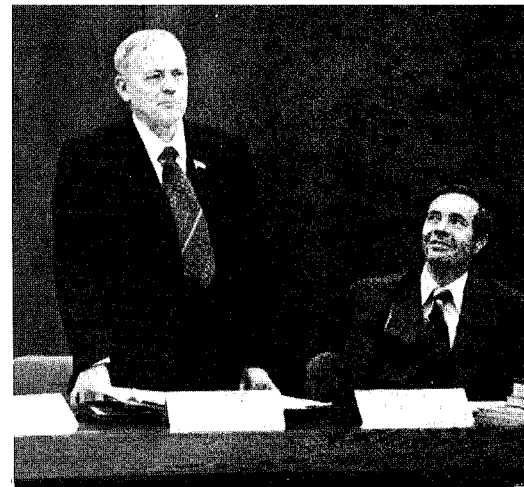


while you are attending, this is extremely important. Because if vodka appears, there is a moral and ethical climate that contributes to new crime. Second, I think that your teachers do the very right thing when they pay so much attention to the problems of the family. You see, at our present time when in a family both the husband and wife work; you probably have the same situation, we have a tendency to lay too much responsibility on the school. Very often schools may give knowledge, may give some educationally minimal knowledge, done in a new fashion. I look at the miracle of my grandson. He is seven years now, and he thinks that soon he will do things you were taught in high mathematics. He is in the first grade now. They become even clever; but they grasp the knowledge! But something that should make human beings human, very often the school is not capable of giving. It just cannot do that because you cannot place all the responsibility on the schools. In our country, great work has been done by the pioneer groups, the young organizations. We have created a lot of schools where they can develop their talents. A common picture in the streets of Moscow would be a small boy or girl who, after his

"I think that everybody must do everything he can to prevent nuclear crisis. The preservation of peace is for our profession perhaps the greatest of all responsibilities."

ordinary school, would go to the musical school for continuation of his studies. But in the family there is drunkenness. It ruins the child. It is simply just not under our protection. The classical picture of this typical situation would be the father who comes home from his work and will sit down, and the child will come up to him and he (the father) will say, "don't bother me! I am tired!" The great attention that you are paying generally in this state to your family, and which I understand is one of the basic principles of your organization, this is a very important point.

Maybe the last point concerning criminal offenses is that we do too little to find out those who involve juvenile delinquents in criminal activity. For a big country like ours, we have 3,200 such particular cases of involvement. We think it is not real. I was amused by another figure, the great American writer, Mark Twain, who said there are three types of lies: simple lies, the violation of oath, and statistics,



the latter being the worst kind. I remembered that because I had to go two times through the statistical data.

My colleagues will answer other questions, but first, I want to say a few things. During the war, I was among those who were fighting against the Nazis, and during the severe months of the siege of Leningrad I stayed all those months in Leningrad. Then I was asked to investigate the Nazi crimes; violations of law and crimes against people. Treblinka, Mauthausen, Dachau, Concentration camps. Then later on in another part of the world, I was in the Tokyo Tribunal, together with my American colleagues, I was prosecuting Japanese war criminals. Now, why I recall this; not to deal with the facts of my authority. I tell you that I have seen in my lifetime a great deal of violence, a great deal of human death. I saw the results of the last atomic bomb dropped on Hiroshima. That was awful. That was something that is now considered to be one bullet in the present thermonuclear arsenal. There are devices a thousand times stronger than that one. I don't know if I should believe it or not but sometimes it is claimed that our planet can be destroyed not once, but several times over and there would be no auditoriums, no lecturers coming from other countries, there are professors at Moscow University who may never get here! I am saying this because we are now struggling for a coefficient of nuclear weapons, with SALT II as part of it. I should think that it would be a great step forward in the survival of our countries if we do this. I'm saying this is not because I came, and not to convert you, but as a participant in the second world war which you will remember has taken over 50 million lives, which in our country was over 20 million lives. During the mass killing by the Nazis, that figure was 12 million.

I think that everybody must do everything he can to prevent nuclear crisis. The preservation of peace is for our profession perhaps the greatest of all responsibilities."

The American Inns of Court: A New Beginning

On Tuesday, February 12, at the Riverside Country Club the first meeting of an Inn of Court was hosted by the J Rueben Clark Law School. In attendance were Lawyers from the state of Utah, Judges from Utah, the Ninth and Tenth Circuits, faculty members from the J Rueben Clark Law School and students. The meeting was the culmination of several years of thought and planning.

The process leading to the establishment of the Inn was described by Judge J Clifford Wallace of the Ninth Circuit Court of Appeals in an address given at the gathering. Judge Wallace had accompanied Chief Justice Warren Burger and others to England several years ago to observe the operation of the English Bench and Bar. Among the positive things observed there were the British Inns of Court. These Inns of Court bring together Judges and Lawyers in an atmosphere in which a free exchange of learning and insight can be made. Impressed by the professional atmosphere and dialogue, the Chief Justice asked Judge Wallace to spearhead a committee to examine the possibility of establishing a similar Inns of Court system in the United States.

After reflecting on the challenges involved with establishing an Inn of Court, Judge Wallace concluded it would be best if the Inn was established in conjunction with a law school. Over the next few years, Judge Wallace and Dean Lee discussed some of the challenges and pos-



JRCLS Dean Rex Lee



Judge A. Sherman Christensen

sibilities of developing such a system in the United States. Joining them was Judge A. Sherman Christensen, a Federal District Court Judge for Utah.

In late September SBA President Terry Turner appointed Bill Orton to head a three member ad hoc committee, which included law students Vaughn Crawford, Mike Eldredge, and Denver Snuffer, for the purpose of assisting in molding ideas into a viable program. The ad hoc committee, under the direction of Judge Christensen, drafted a charter, decided on membership, and with the financial assistance of the law school, conducted the first meeting of the Inn. The initial meeting a board of six benchers and a chief executive officer (treasurer) were elected, modeled after the traditional English system.

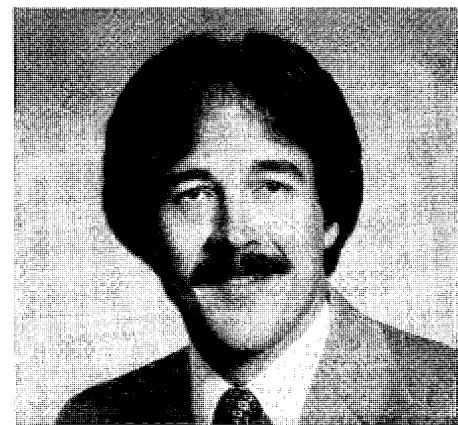
During the course of his remarks, Judge Wallace reminded those in attendance of the observation made by Chief Justice Burger about lawyer competency before Federal Courts. "It is hoped," said the Judge, "that this Inn of Court system, the prototype of which is being established here tonight, will contribute in a unique way to the education and training of practicing Lawyers and Judges. Traditional law school training, fraternities, and Continuing Education programs have proven inadequate. We hope to establish a new catalyst to fill in where a need currently exists."

Membership in the New Inn included a dozen experienced lawyers, a dozen young lawyers, a dozen law students, five judges, and three members of the law school faculty. Dean Lee spoke briefly and complimented Judge Christensen for his efforts and enthusiasm in planning the Inn of Court. "It was Judge Christensen more than any single other person who is responsible for this gathering," said the Dean, referring to the fact that Judge Christensen had the most significant input and foresight in bringing the Inn from the abstract to reality.

Judge Christensen, in his characteristic modesty, spoke briefly and insisted his contributions were minimal. Judge Christensen went on to say: "I hope those of you who are here catch the vision of what we are doing. If what we are about proves to be an effective mechanism for bettering lawyering skills, our program will be noticed and copied nationwide."

Interest in the Inn of Court runs all the way to Chief Justice Burger. The Inns of Court system, it is expected, will one day run nationally. Certainly there is no argument that improvement of a lawyer's advocative skills is a universal goal, supported by The Cranston Committee, the Devitt Report, the Chief Justice and the American Bar Association. The problem is conceded, the cure is what is wanted. The Inn's of Court may prove to be the cure.

The Inn established this month will meet monthly; at each gathering a discussion will be held on a specific subject. The March meeting, for example, will feature a voir dire conducted both under the federal procedures, utilizing the judge, and under state procedures, utilizing lawyers, to be followed by a discussion on the relative merits of each system. It is anticipated that the discussion will be lively with all present contributing. The strength of the Inn is in the interchange of ideas.



Bill Orton

Phi Delta Phi Establishes Sutherland Inn at J. Reuben Clark Law School

Phi Delta Phi, founded in 1869 at the University of Michigan, is the oldest and largest professional legal fraternity in America.

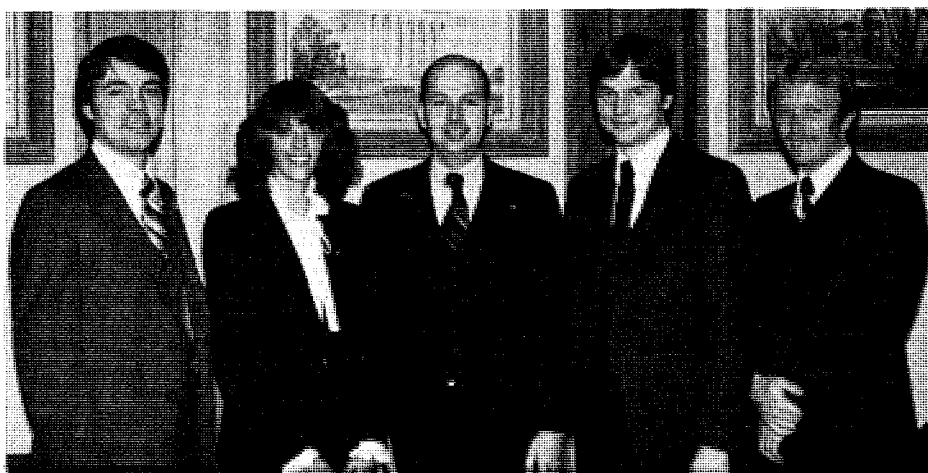
The George Sutherland Inn of the International Legal Fraternity of Phi Delta Phi was established at the J. Reuben Clark Law School on October 13, 1979. Members of the fraternity's Executive Council gathered at the school from all parts of the country to administer the fraternity's 110-year-old ritual to 32 student initiates and to the Sutherland Inn's first honorary member, the Honorable Aldon J. Anderson, Chief United States District Court Judge, District of Utah. Membership of the Sutherland Inn doubled at its Winter Initiation held February 5, 1980, which included the induction into Phi Delta Phi of the Honorable Malcolm R. Wilkey, United States Court of Appeals Judge, District of Columbia Circuit.

Phi Delta Phi, founded in 1869 at the University of Michigan, is the oldest and largest professional legal fraternity in America. Chapters of the fraternity, called Inns, after the Inns of Court in England, are organized at over 130 law schools throughout the United States, Canada, and Latin America. The International Headquarters of Phi Delta Phi are located in Washington, D.C.

The purpose of Phi Delta Phi, as stated in its Constitution, is to promote a higher standard of professional ethics and culture in the law school and in the legal profession at large. The Sutherland Inn is meeting that goal by sponsoring speakers at the law school and holding various social and cultural activities. The Inn has also



The Benchers administer the Phi Delta Phi Ritual at the Winter Initiation. From left to right: Magister Gregory Burr, Judge Aldon Anderson, Richard Clark, Esq., Professor Douglas Parker, and Jack Bush, Esq.



PHI DELTA PHI OFFICERS, from left to right: Mark Albright, Cindy Frazier, Gregory Burr, Reid Everett, and Jonathan Duke



Sutherland Inn's Charter Honorary Member, The Honorable Aldon J. Anderson, Chief U.S. District Court Judge

held several fundraising activities this year to provide it with the means to carry out its programs.

Months of careful planning and preparation went into the founding of the Sutherland Inn. The Inn has grown rapidly into a thriving, dynamic organization due in no small measure to the dedicated efforts of its officers. Serving as officers of the Inn during its charter year are Gregory Burr, Magister, Jonathan Duke, Vice Magister, Cindy Frazier, Exchequer,

Reid Everett, Clerk, and Mark Albright, Historian.

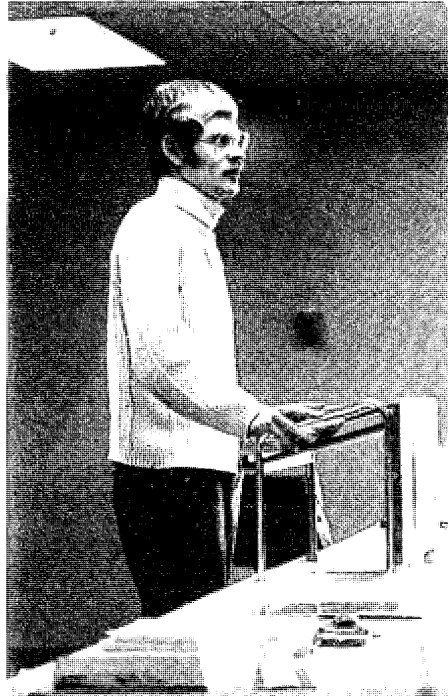
The Sutherland Inn recently named Gregory Burr as the first recipient of its annual Graduate of the Year Award. Aside from serving as the Inn's first Magister, Greg also attended the Phi Delta Phi International Convention in Quebec City as the Inn's official delegate, and has taken an active role in the Student Bar Association and other law school organizations.

JRCLS AND THE ABA/LSD

Few students at J Reuben Clark Law School are aware of the Law Student Division of the American Bar Association, but you can rest assured the ABA/LSD has become well acquainted with the Law School at Brigham Young University over the past year. For the first time since the law school was organized, law students at BYU have become actively involved in the activities of the Tenth Circuit and have contributed significantly to the overall success of circuit functions this year.

SBA President Terry Turner explains, "Last March the newly elected Board of Governors made the decision to give the Law Student Division our full support this year, rather than continue the lukewarm participation characteristic of the past. Our aim was twofold; first, we wanted to see if we could make any impact on circuit and national activities through our increased participation, and second, we wanted to bring home more tangible benefits to law students at BYU realized through active involvement. Our first goal seems to have been met with some degree of success and we are just now in a position where our second goal is within reach if we can just take advantage of the opportunities that are now available to us."

BYU Law Students first appeared *en masse* at the Spring Conference held at Taos, New Mexico last March 23-25 with a delegation of nine, headed by SBA president-elect Terry Turner. Arriving late, the BYU contingent found the conference deadlocked in a three-way split over who should be the next circuit governor. With the battle lines fairly drawn and commitments to the candidates relatively firm, BYU's addition of a fourth candidate, John Chaffin, seemed rather futile. What did exist, however, was a rather unique opportunity to swing the election for either Rich Bellah of the University of Arizona, or Rita Bennett of the University of Tulsa. After some degree of negotiating and political maneuvering, BYU cast their



John Chaffin welcomes delegates to Park City conference

votes for Rita Bennett of Tulsa who was in turn elected on the first ballot. Subsequently, John Chaffin of BYU was named Lieutenant Governor of the circuit, a second position on the circuit was committed to BYU for the circuit newsletter editor and finally, an unconfirmed commitment made to hold the Fall Roundtable in Utah. The unique "swing vote" position at Taos had provided the means by which BYU students could jump into the middle of Tenth Circuit activities and thereby seek to accomplish their first objective of being a viable influence in the ABA/LSD.

In June, John Chaffin and BYU's ABA/LSD representative June Babiracki attended the Summer Caucus at the University of Tulsa to plan activities of the Tenth Circuit for the coming year. At the caucus, Park City was selected as the site for the annual Fall Roundtable in October under the direction of Mike Eldredge, who

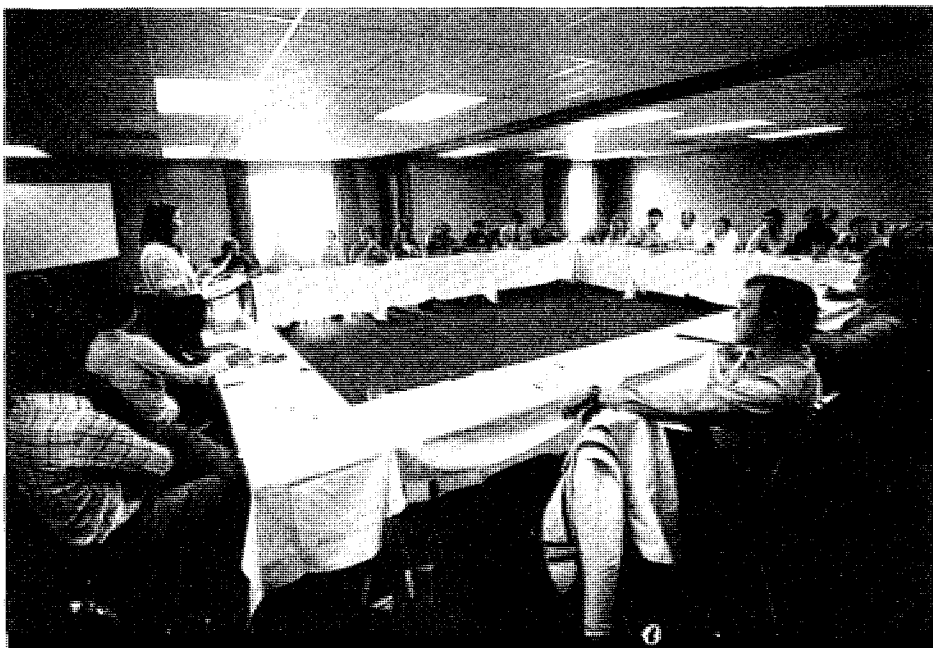
was also appointed to fill BYU'S second spot on the Circuit Cabinet as the Newsletter Editor.

BYU's appearance on the ABA/LSD scene had been sudden and intense, and from various quarters of the circuit some grumbling and skepticism surfaced in the wake of the summer caucus announcements. For Rita Bennett, the pressure was on. At Taos, she had acknowledged the apparent enthusiasm of the large BYU delegation and announced her intent to take advantage of that enthusiasm. For years, it had been the southern and eastern schools of the circuit who had carried the bulk of circuit responsibility. BYU, on the other hand, had been one of the lowest membership schools in the circuit since its first appearance in 1973. In relying heavily on BYU for the 1979-80 program, Bennett put many of her eggs in one basket which could make or break her term as circuit governor.

Shortly after summer caucus, it was announced that two BYU students had been appointed to national positions. In an unprecedented move, the national ABA/LSD officers appointed Cathy Pennington and Dale Bacigalupi as student liaisons to standing committees of the American Bar Association, positions that

Editor's Note, Postscript: On March 22, 1980 at the spring conference in Laramie, Wyoming, second-year law student Matt Hilton was elected

Governor of the new 15th Circuit. In addition, JRCLS swept every award in its class including Best S.B.A., Best S.B.A. Project, Best Newsletter. Five JRCLS law students were awarded the Golden Key, the highest award given in the 10th Circuit, for service in the LSD/ABA. They were John Chaffin, Mike Eldredge, Terry Turner, Kathy Pennington, and June Babiracki.



Cathy Pennington addresses delegates at Park City Fall Roundtable.

go to fewer than half of the law schools in the country. For BYU to land two appointments was highly unusual, and reflected again the high degree of reliance placed on the initial show of enthusiasm by the BYU delegation of Taos. Cathy Pennington, it was announced, would serve as student liaison to the American Judicature Society, and Dale B. Bacigalupi was assigned as liaison to the General Practice Section.

Our aim was twofold: first, we wanted to see if we could make any impact on circuit and national activities through our increased participation, and second, we wanted to bring home more tangible benefits to law students at BYU realized through active involvement.

In August the entire body of the American Bar Association gathered in Dallas for the 101st Annual Convention. Again BYU was well represented with six law students in attendance, one of the largest law school delegations at the convention. For the most part, Dallas proved to be an exercise in being seen but not heard, with one notable exception. When a resolution was introduced in the National Assembly of the Law Student Division calling for a boycott on all states that had not ratified the Equal Rights Amendment by refusing to authorize ABA ac-

tivities in those states, John Chaffin of BYU was the first to rise against the proposal. Drawing the attention of virtually every delegate on the floor, Chaffin deplored the use of economic tactics to attempt to force the free conscience of those who chose not to agree with the ERA. Reminding the delegates of their status as students of law, Chaffin questioned the suitability of an ABA resolution which ignored the very rights as future lawyers they would be asked to protect. It seemed ludicrous, Chaffin argued, to penalize states simply because they disagreed with the proponents of the ERA. The conclusion of Chaffin's rebuttal brought a rousing ovation from the floor; and though opponents of the resolution appeared to have won the battle, the war was ultimately lost when the resolution passed, ironically with a rider that excluded the Law Student Division from having to participate. As Rita Bennett pointed out, to impose such a sanction on the Tenth Circuit would result in the elimination of every state in the Tenth Circuit, except one, as a possible location for ABA/LSD activities.

One important result did come out of Dallas. The assembly voted to split the Tenth Circuit in 1980, pulling law schools from Oklahoma and Kansas out of the old circuit and joining them with Arkansas schools to form the new Tenth Circuit. Schools in the intermountain states of New Mexico, Arizona, Colorado, Utah and Wyoming would form the new Fifteenth Circuit. The move brought mixed

reactions from schools throughout the circuit. The most severe criticism came from Arizona schools who saw the move as a dilution of the powerful position always enjoyed by the Tenth Circuit on the national level. Others were skeptical that the

Chaffin questioned the suitability of an ABA resolution which ignored the very rights as future lawyers they would be asked to protect. It seemed ludicrous, Chaffin argued, to penalize states simply because they disagreed with the proponents of the ERA.

new Fifteenth Circuit would survive due to the apathy that appeared to exist in the intermountain states. Nonetheless, most representatives from the new Fifteenth Circuit schools felt confident that the move was a wise one. Schools in the intermountain area had a great deal of common interests due to the geographical location, in areas such as energy and natural resources, that would serve as a basis for a stronger circuit identification. It was also argued that many schools in the circuit would become more actively involved when the center of activity shifted from Oklahoma to areas closer to the intermountain schools. In the past, some activities located at one end of the circuit had



SBA President Terry Turner



John Chaffin ponders over the political field shortly before election at Taos, New Mexico

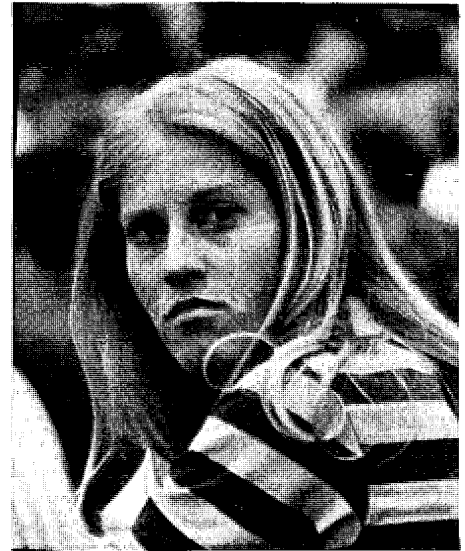
economically precluded schools at the other end of the circuit from attending. Yet even with the split, the new Fifteenth Circuit would still be the largest circuit in the country geographically and schools within that circuit would always be faced with higher costs to participate in ABA/LSD activities. The circuit split still gave the intermountain states their own governor, a budget for eight schools instead of thirteen, and a relatively smaller circuit to travel in, all positive factors which most representatives saw as outweighing the possible negative factors.

Following the Dallas Convention, the attention of the Tenth Circuit shifted to Utah where the Fall Roundtable was scheduled to take place Oct. 19-21 in Park City. In Dallas several school representatives had expressed misgivings at BYU sponsoring the Fall Roundtable, primarily

based on what they feared would be the imposition of LDS standards on their activities. For this reason, Park City had been selected as a "neutral" site where BYU could host the Tenth Circuit in facilities that would not require circuit delegates to adhere to BYU standards. From the outset, the SBA Board of Governors at BYU sought only to make the Tenth Circuit feel welcome and every effort was

"I think we accomplished most all of the objectives we set out to do: we gave everyone a full schedule of workshops, we made them feel comfortable in their surroundings, while at the same time, presented ourselves in the same manner we would have on BYU's campus."

made to insure that no inconveniences were imposed on the visiting delegates. As the same time, however, it was also decided that the conference must prove to be substantively worth the time and expense, and every effort would be made to insure that the schedule included productive sessions directly related to ABA/LSD programs. To these ends, the planning efforts for the Fall Roundtable were directed through Sept. and completed in early Oct. Originally scheduled for the weekend of



Jan Bensen

Oct. 13, the conference was moved back one week to allow Oklahoma law students to attend the Oklahoma-Texas football game. Unfortunately, the unusually mild Indian summer ended October 16, and by the time circuit delegates began to arrive, Winter had beat them to Park City.

Most delegates arrived at Salt Lake International Airport Friday afternoon where they were met by SBA officers and given a quick tour of Salt Lake City. After being taken to the Yarrow Inn in Park City, they were hosted by Rita Bennett to an informal reception which lasted well into Friday night. Saturday morning the business sessions began bright and early and lasted throughout the day covering topics in Legislative Drafting, National Association of Student Bar Association (NASBA) activities, client-counseling competition, Appellate Advocacy competition, liaison programs, MED/LAW Interdisciplinary presentations, and a workshop in Natural Resource Law Forum activities of the University of Utah. Throughout the day, every hour was fully scheduled and no delegate was left without some form of substantial assistance for the ABA/LSD programs of the schools they represented. When the day was over, most delegates agreed it had been one of the most productive Roundtables ever held, and expressed nothing but praise for BYU in hosting the affair. After a Saturday evening prime rib dinner, every delegate at the conference took advantage of BYU's invitation to hear the Mormon Tabernacle Choir at its weekly broadcast from Temple Square early Sunday morning.

After the conference was over, Roundtable Chairman Mike Eldredge reflected, "I think we accomplished most all



June Babiracki, Mike Eldredge, Terry Turner and Cathy Pennington pose with National Secretary Treasurer David Sheinfeld at Park City

of the objectives we set out to do; we gave everyone a full schedule of workshops, we made them feel comfortable in their surroundings, while at the same time, presented ourselves in the same manner we would have on BYU's campus. More importantly, however, I think we succeeded

"... We have potential for other programs limited only the imagination of BYU law students. If we are going to succeed at our second goal in ABA/LSD involvement, we've got to make students aware of the opportunities available, and then get in there and use them. . ."

in dispelling what might have been described as a stuffed-shirt, incompetent, "zeal without knowledge" type image. For the most part, I think BYU has established its credibility in ABA/LSD affairs."

With the Fall Roundtable over, the focus of ABA/LSD activities shifted to individual school programs, setting the stage for the SBA's second major objective of bringing home more tangible benefits to BYU law students. One of the spin-off results of increased activity at the circuit level during the fall semester was a marked increase in ABA/LSD membership at BYU. In previous years BYU's average membership had hovered around 13%, but following the fall semester membership drive, the figure jumped to 35%, putting BYU over the magical 30% level and qualifying the school for matching project funds from the ABA. "These funds,"

explains ABA/LSD representative June Babiracki, "are made available for law student projects and will match SBA funding up to \$1,000. We need first to identify suitable projects, determine how much the SBA will fund them, and then make application."

In evaluating student benefits from ABA/LSD, there are at least two levels at which a law student can expect return on his \$6.50 investment; he can expect benefits on an individual basis, and he can become involved in programs provided by his school's ABA/LSD sponsored programs.

Individual benefits are fairly static and are set at the national level each year. This year, student members received *Student Lawyer* and *The ABA Journal* monthly, they are eligible for low cost insurance, a 35% discount at Hertz rent-a-car, and a 75% discount on registration fees at the ABA Annual or mid-year meetings. In addition, student members are eligible for low student rates if they wish to join any of the 24 substantive law sections of the ABA. Third year law students receive their first year of membership in the ABA free upon passing the Bar.

At the school level, six major programs are available for students having an interest in those areas. They include the Volunteer Income Tax Assistance program (VITA), the Law/Medical Interdisciplinary Council, the Legislative Research and Drafting Program, State and Local Bar Liaisons, Client-Counseling Competition, and Appellate Advocacy Competition. Each of these programs are available to BYU students, and the SBA is ready and willing to initiate those programs which command any degree of stu-

dent interest. In addition, any programs the students may wish to start on their own are strongly encouraged and supported by the SBA so long as there is genuine interest with a viable organization. Students at BYU have already begun organization of a Natural Resources Law Forum similar to the NRLF at the University of Utah Law School, and hope to establish worthwhile programs of interest in the coming year.

Still, the key to success in any law school program is student interest and support. "The ABA/LSD provides us with the framework for six programs," comments SBA President Turner, "and we have potential for other programs limited only by the imagination of BYU law students. If we are going to succeed at our second goal in ABA/LSD involvement, we've got to make students aware of the opportunities available, and then get in there and use them. If we can't find the interest, then it simply becomes a matter of what may have been, but never was."

In March, the year's efforts with ABA/LSD will come full circle at the annual spring conference to be held at the University of Wyoming in Laramie. "Perhaps one of our biggest failures this year," laments Lt. Governor John Chaffin, "has been our inability to get second year students involved. With the Spring Conference coming up we have virtually no one in the second year class ready to step in and carry on. If we had succeeded in using second or first year students all along the way, we certainly would be in a strong position to have a shot at Circuit Governor, and maybe even a national office. Unfortunately, the second year students who have participated on a limited basis have lost interest or become involved with other projects and programs."

Whatever the immediate future holds for BYU in the ABA/LSD will be determined by next year's SBA Board of Governors and those individual students who choose to pursue individual appointments as liaisons to the sections and committees of the ABA. Regardless of whether or not interest increases in the coming months, one thing is certain, the Spring Conference at Laramie will be determinative of what role BYU will play. It is there that the new circuit governor will be elected, and it is there that interviews will be conducted for liaisons and circuit cabinet positions. After Laramie it will be a simple matter of "The Train's Done Been and Gone."



Denton Pierson (U of U) and June Babiracki during a break at the Fall Roundtable in Park City

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LEGACIES IN LAW:

FRANKLIN S. RIC

by Michael S. Eldredge

On Monday morning, April 7, 1873, Brigham Young rose before the congregation seated in the Tabernacle, and in a departure from his traditional hostile attitude towards the legal profession, addressed the General Conference session on the need for increased emphasis in legal education

I think my brethren will agree with me that this is wise and practicable—for from one to five thousand of our young middle aged men to turn their attention to the study of law I would not speak lightly in the least of law, we are sustained by it; but what is called the practice of law is not always the administration of justice, and would not be so considered in many courts—we have good and just men who are lawyers, and we would like to have a great many more

If I could get my own feelings answered I would have law in our school books, and have our youth study law at school. Then lead their minds to study the decisions and counsels of the just and the wise, and not forever be studying how to get the advantage of their neighbor. This is wisdom (JD 16:9)

President Young's concern for the establishment of a strong and competent legal profession within the church was not without foundation in post Civil War Utah. The struggles between the territorial government of Utah and the federal government were well underway, and by the 1870's had reached an alarming crescendo.

In 1875, Brigham Young's secretary, George Reynolds, agreed to be the test case for the Anti-Bigamy Law of 1862. Four years later, his conviction was upheld by the United States Supreme Court in *Reynolds v. the United States*, leaving the church with no legal basis for the practice of plural marriage. In the wake of *Reynolds*, the First Presidency summoned a young attorney from Ogden to assume the office of General Counsel for the church, a position that Franklin Snyder Richards would hold for the next several decades.

Richards had moved to Ogden shortly after his marriage to Emily S. Tanner in December 1868, and almost immediately he was appointed as clerk for the county probate courts. He was later elected Weber County Recorder at which time he began an extensive, self-taught course of study to master legal forms associated with his office. Since there were no lawyers residing in Ogden, President Young counseled Richards to seek admission to the Bar, based on what the Church President saw as a keen ability in Richards

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“... 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.”

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to master the complexities of law. Richards followed the counsel of President Young and began a more intensive study of law in the traditional manner of reading that was so characteristic of the legal profession up to the 1870's. On June 16, 1874, four days before his twenty-fifth birthday, Franklin S. Richards was admitted to the Bar of the Third District Court in Salt Lake City.

Richards' first case was to defend a man accused of murder and assumed by many to be guilty without question. The young lawyer threw himself into the case with the vigor of an experienced trial attorney, and much to the astonishment of everyone, won an acquittal for his client. However, before Richards was able to settle in to his new profession, a brief mission to Great Britain brought a hiatus to his law practice. He returned to Utah in 1878 and immediately was retained to help sort out the quagmire of Brigham Young's estate.

Shortly after his return from Great Britain, Richards formed a partnership with the former Chief Justice of the Kentucky Supreme Court, Rufus K. Williams. When complications in the estate of Brigham Young eventually resulted in a suit against the church by some of the dissatisfied members of his family, the firm of Richards and Williams was retained by the First Presidency, which ultimately led to Franklin Richards being appointed as General Counsel for the Church. Richards did succeed in defending the church against claims totaling well over \$1 million; claims that could have sent the financially troubled church into an economic tailspin. Shortly thereafter, Richards was again called on by the

HARDS, ATTORNEY DURING CRISIS



In Washington, D.C., circa 1885

church, this time to assist in preventing the disenfranchisement of Utah women. Though Richards did “win the battle” when he succeeded in having the case dismissed, the “war was lost” with the subsequent passage of the Edmunds-Tucker Bill several years later in 1887.

“ . . . I would not speak lightly in the least of law, we are sustained by it; but what is called the practice of law is not always the administration of justice, and would not be so considered in many courts . . . ”

Richards’ notoriety as a lawyer spread quickly throughout Zion and was met with mixed reactions by members of the church who had long been taught to avoid the avarices of a lawyer. Somewhat dismayed by the lack of understanding displayed by many saints, Richards’ father, Apostle Franklin D. Richards, retorted to a congregation assembled in the Ogden Tabernacle in early 1885, how:

a few days ago . . . a Bishop remarked that it looked very singular for one of the Apostles to raise up a lawyer, and thought there must be a screw loose somewhere. It happens, however, once in a while that same Bishop wants my son to help defend them before the courts (laughter) I wonder if there is a screw loose there (JD 26:102)

Apostle Richards went on to reaffirm the call made by President Young years earlier,

. . . 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. (JD 26:103)

Beginning with the Constitutional Convention of 1882, Franklin S. Richards had become actively involved with the drive for Utah statehood. Against the mounting pressure of congressional sanctions imposed on the church and the Territory of Utah, statehood seemed the only hope of immediate escape, and even then, the chances for statehood were slim indeed. Following the Constitutional Convention of 1882, Richards accompanied John T. Caine and David H. Peery to Washington, D.C. to present the petition for statehood before Congress. Though

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The Church’s attorneys argued that the charter which created the church corporation was a constitutionally protected vested right of contract which could not be altered or repealed by any subsequent acts of either the territorial legislature or Congress.

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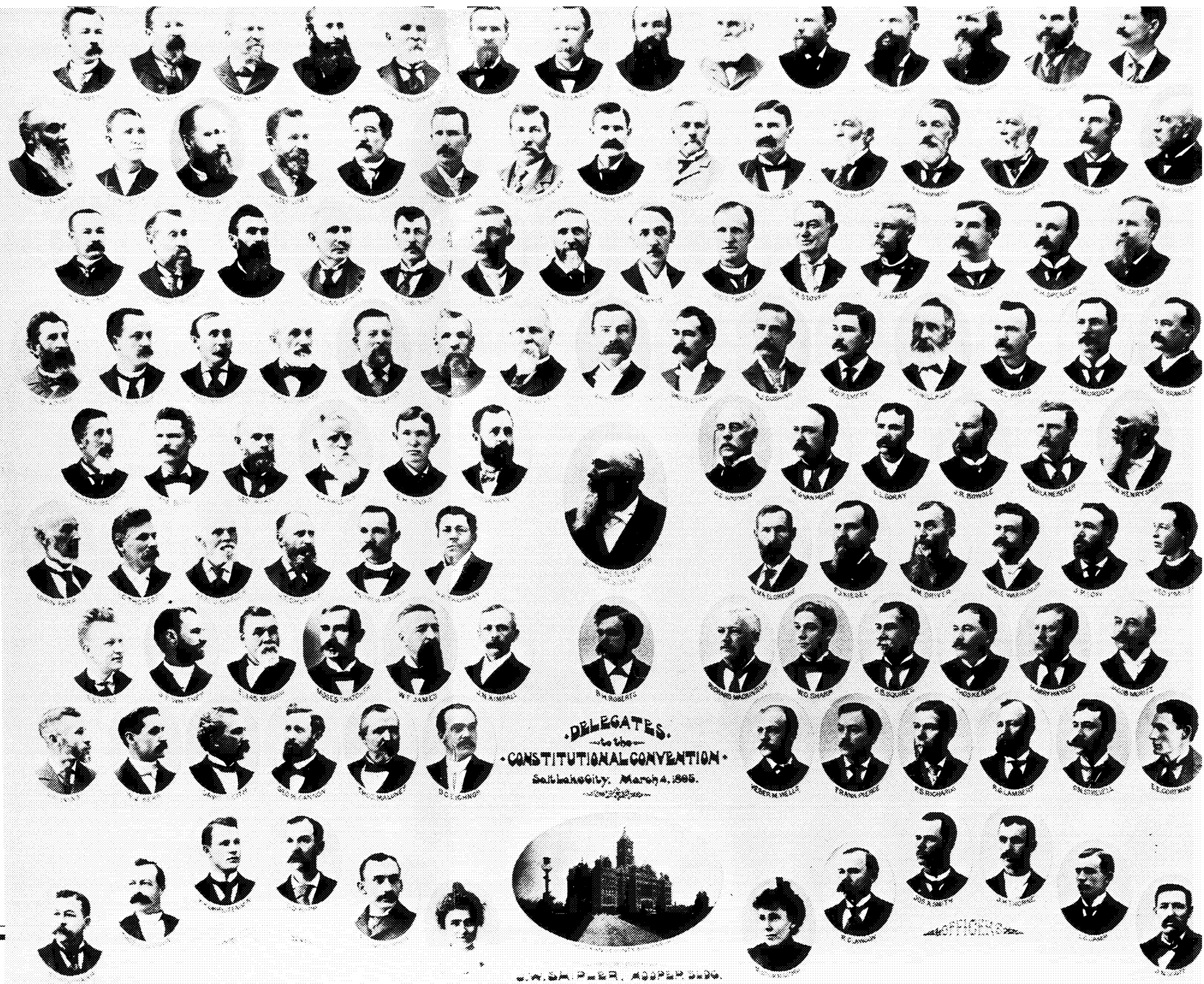
the bid was unsuccessful, Richards did, however, succeed in winning the admiration of many influential members of Congress and other important people in the federal government, which proved to be most helpful in the rough years that followed.

Returning home to Utah, Richards was presented in the Fall of 1882 with the nomination of the People's Party to succeed George Q. Cannon as the Territorial Representative to Congress. Although flattered by the honor, Richards declined in favor of his close friend, John T. Came, who was ultimately elected and went on to provide invaluable service to the Territory of Utah during the bleak years of the 1880's.

After serving several years as Ogden City Attorney and prosecuting attorney for Weber County, Franklin S. Richards moved his family to Salt Lake City, where in 1884 he became city attorney, a position he held until 1890. The move was in part necessitated by the increased strain between the Mormons and the federal government. As General Counsel for the church, his time and efforts were turning more and more towards the defense of polygamists who were being hunted vigorously. Since Richards himself was not a practicing polygamist, he rapidly became one of the few visible figures of the church. With most of the polygamist General Authorities going underground, Richards became an important link between the church leadership *in absentia* and the outside world. For church members not in hiding, the increase in federally imposed sanctions and harassment brought confusion and distress from which there often seemed to be no escape. Richards quickly became a voice from whom the saints sought counsel, especially after the passage of the Edmunds-Tucker Act in 1887. When asked about the loyalty oath required of all voters, Richards calmly advised church members to take the oath as a means of preserving their voting rights, and promised to attack the apparently unconstitutional oath in court.

Richards' efforts in behalf of the church were being asserted on two fronts. On the positive side, he continued actively

Several of the most prominent figures in Utah found their way to the Constitutional Convention of 1895, including Franklin S. Richards (lower right hand corner). Richards was most remembered for his famous debate with B.H. Roberts (center) over women's suffrage.



to support every attempt to gain statehood. His popularity in Washington served to underscore the importance of his position as mediator which circumstances placed him in. Though both sides of the struggle often appeared deadlocked in a test of will, communications were kept open through the efforts of John T. Caine and Franklin S. Richards who made nocturnal visits to the hideouts of church officials to discuss developments and counterproposals before deciding on a particular strategy. At these sessions Richards would convey informal comments made by congressional leaders that were possible indications of what actions by the church could acceptably resolve the differences that were holding up statehood. For Richards, statehood was the most important goal to be sought, and like many others, he felt strongly that it was the only means by which the struggle could be resolved. Accordingly, he pursued a conciliatory approach that would compromise with the federal government wherever it was doctrinally possible for the church. Richards saw the protracted war of attrition with the federal government as potentially disastrous for the church and was anxious to resolve the most critical issues preventing statehood before the church was destroyed.

At the Bar, Richards continued to defend the church and its polygamous members with vigor, but for the most part it was to be a losing struggle. The territorial prison roster closely resembled an LDS Who's Who as church officers ranging from the First Presidency to stake presidents and bishops shared quarters in the overcrowded penitentiary. While Franklin S. Richards was involved in several prominent cases in the late 1880's, two cases in particular stand out in importance, one of which had a direct and important consequence on those Mormons incarcerated for cohabitation.

In the late Fall of 1885, Apostle Lorenzo Snow returned from visiting in Wyoming and was immediately captured at his home in Brigham City. He was subsequently indicted on three counts of unlawful cohabitation and eventually convicted, receiving three consecutive sentences of six months in prison under a new segregation ruling by Judge Charles S. Zane. President Snow entered the penitentiary in March of 1886 and served his first six month sentence, whereupon Franklin S. Richards immediately brought a writ of habeas corpus on appeal before



The prisoner rolls at the Utah Territorial Penitentiary resembled a who's who of the LDS Church during the late 1880's. Here George Q. Cannon of the Church's first presidency is surrounded by fellow "cohabs."

the U.S. Supreme Court stating that President Snow was being punished three times for the same offense of continuous cohabitation. The Supreme Court agreed that there was but one entire offense and ordered President Snow released. The victory was a tremendous boost for the morale of the church and a stunning defeat for the crusaders sent to solve "the Utah Problem." When President Snow was released from prison, he was met by a jubilant crowd that escorted him triumphantly into the city. For Franklin S. Richards the victory won him instantaneous respect and admiration in all corners of the Territory and in Washington. Not only had he secured the release of President Snow, but well over one hundred others who had been convicted and sentenced under the unconstitutional segregation rule.

Richards did not enjoy the same degree of success in the second major case of this period, and its effect was far more significant to the ultimate outcome of the struggle between the church and the federal government.

"The territorial prison roster closely resembled an LDS Who's Who as church officers ranging from the First Presidency to stake presidents and bishops shared quarters in the overcrowded penitentiary."

Shortly before the passage of the Edmunds-Tucker Act in 1887, the church began preparing for the anticipated dissolution of the church as a corporate entity. The provisions of the bill which allowed escheatment of all church property in excess of \$50,000 to the federal government were known well in advance. Preparations were made to dispose of much of the church's holdings to various select individuals, specially created nonprofit associations, and secret trusts overseen by numerous ecclesiastical authorities within the church. Shortly after President John Taylor's death on July 25, 1887, George S. Peters, the U.S. Attorney for the Territory of Utah brought suit against the church to recover all property held by the trustee-in-trust in excess of \$50,000 under the enacted provision of the Edmunds-Tucker Act. What ensued was a lengthy court battle lasting almost three years involving some of the best legal minds in the country, not the least of whom was Franklin S. Richards.

Beginning in the Territorial Supreme Court, *United States v. The Late Corporation of the Church of Jesus Christ of Latter-Day Saints, et al.* eventually found its way to the U.S. Supreme Court where oral arguments were heard in January 1889. Richards, along with John M. Butler, James O. Broadhead, and Joseph E. McDonald, argued against the actions of the federal government on several grounds. They asserted that Congress was without power to repeal the territorial charter under which the church had been

incorporated, and further, that the federal government was totally without power to seize the property of the corporation and hold it for the benefit of public schools in Utah. Citing *Dartmouth College v. Woodward*, the church's attorneys argued that the charter which created the church corporation was a constitutionally protected vested right of contract which could not be altered or repealed by any subsequent acts of either the territorial legislature or Congress. Turning to the issue of escheatment, they pointed out that there was no precedence to support Edmund-Tucker provisions of escheating personal property to the United States, nor was personal property subject to escheat because of the failure or illegality of the trusts to which it was dedicated at its acquisition and for which it had been used by the corporation. Finally, the attorneys argued that the real property owned by the church could not constitutionally be taken by the federal government under the terms of the Edmunds-Tucker Act.

Seventeen months later, the Supreme Court handed down its decision on May 19, 1890, ruling against the church on virtually every issue, stating that the plenary power of Congress over territories gave them power not only to abrogate the laws of territorial legislatures, but also the power to legislate directly for the territory. Congress thus had a full and perfect right to repeal the territorial charter and abrogate the corporate existence of the church. The court further ruled that the federal government could dispose of the assets of the dissolved corporation so long as such disposition was used with due regard for the objects and purposes to which the property was originally devoted; in this case for religious and charitable uses. Finally, the court addressed itself to the attempted disposition of church property before the Edmunds-Tucker Act became effective, calling the attempt an evasion of the law, and void.

The effect of the decision was devastating both to the morale and the temporal power of the church. Already in the congressional hopper was the new Cullom-Strubbe Bill which was expressly designed after the Idaho Test Oath law to effectively disenfranchise the Mormon Church completely. For months Franklin S. Richards had fought desperately against the bill with petitions signed by non-Mormons urging Congress to defeat the proposal; but the Supreme Court's decision against the church had dealt a stag-



Utah Delegates in Washington front row, John T. Caine, Mrs. John T. Caine (Margaret Nightingale Cain), Pres. Joseph F. Smith, Mrs. Franklin S. Richards, Franklin S. Richards; back row, George F. Gibbs, L. John Nuttall and Charles W. Penrose

gering blow to the move for *rapprochement* with the federal government. With renewed vigor the crusaders against the "Utah problem" fought even harder for the passage of the Cullom-Strubbe Bill, and when the Utah Commission strongly endorsed the measure on August 22, 1890, its passage seemed imminent.

The passage of the bill loomed heavily over the church when Frank Cannon returned to Utah from Washington with what deemed to be a last chance appeal from the Republican Party for the church to abandon plural marriage. Reporting to his father, George Q. Cannon of the First Presidency, Frank was in turn informed that President Woodruff had sought the mind of the Lord and it appeared that a solution was near. Indeed, one month

after the report of the Utah Commission, President Wilford Woodruff declared on September 24 what has come to be known as the Manifesto, as a direct response to the press release of August 22. On October 6, the Manifesto was presented before the body of the church in Conference session whereupon it was sustained unanimously.

The Manifesto seemed to bring about conclusively the denouement to the struggle between the church and the federal government, opening the door at last towards statehood. To this end, Franklin S. Richards continued his tireless efforts, first by solidifying the trust of Congress, and second, by pressing forward in yet another Constitutional Convention. As chairman of the church's politically powerful People's Party, Richards moved on June 10, 1891 to disband the party which was sustained unanimously by the Territorial Central Committee, opening the door for the national two party system in Utah. Three years later, on July 16, 1894, President Cleveland signed into law the Enabling Act that provided for Utah's admission to the Union. The following year, Franklin S. Richards found himself again in the Constitutional Convention, but this time with the knowledge that efforts would not be in vain. His participation was extremely active in all aspects of the framing of the Utah Constitution, and he was especially adamant in his defense of Women's suffrage as demonstrated by his famous debate with B.H. Roberts. Finally, on January 4, 1896, statehood was achieved, enabling Richards to turn more of his attention to the practice of law without having to concern himself with the



Franklin S. Richards shortly after the Smoot Hearings of 1906

political pressures brought against the church

With the Mormon Church restored as a corporate entity, Richards turned his attention towards some of the problems that had been encountered prior to the Manifesto. Of chief importance was the means of holding church property in a manner that would not be subject to mass escheatment if troubles were ever encountered again. To this end, Richards spent the next several years devising a system of ownership that previously had not been seen to any wide extent in America. Using the sole corporation as his basis, Richards set about organizing ward and stake properties under the sole corporate ownership of the ecclesiastical leaders responsible at each level. The sole corporation enabled Bishops to hold title to all church properties within his ward, and likewise, the Stake President for all stake properties under his exclusive stewardship. A sole corporation was created in the Presiding Bishopric for all mission properties wherever the law permitted, and the

President of the Church was incorporated to hold title to such properties as temples, educational institutions, and other real estate holdings. The creation of such sole corporations enabled the automatic passage of title to property at various levels in the church hierarchy each time a successor was called to assume the Bishopric or Presidency. For Franklin S. Richards, the task was not only to develop a foolproof system of sole corporations, but also provide the means under which those corporations could exist. He first sought legislation in those states where the church held the majority of its properties, including Utah, Wyoming, Idaho, Arizona, and Nevada. Next, those states wherein mission properties were located were approached to provide the statutory basis for sole corporations. Finally, Richards' efforts took him outside of the United States to seek legislative support in those foreign countries where missions were located, requiring an astute knowledge of all aspects of international law and comparative legal systems. In all, the project took sev-

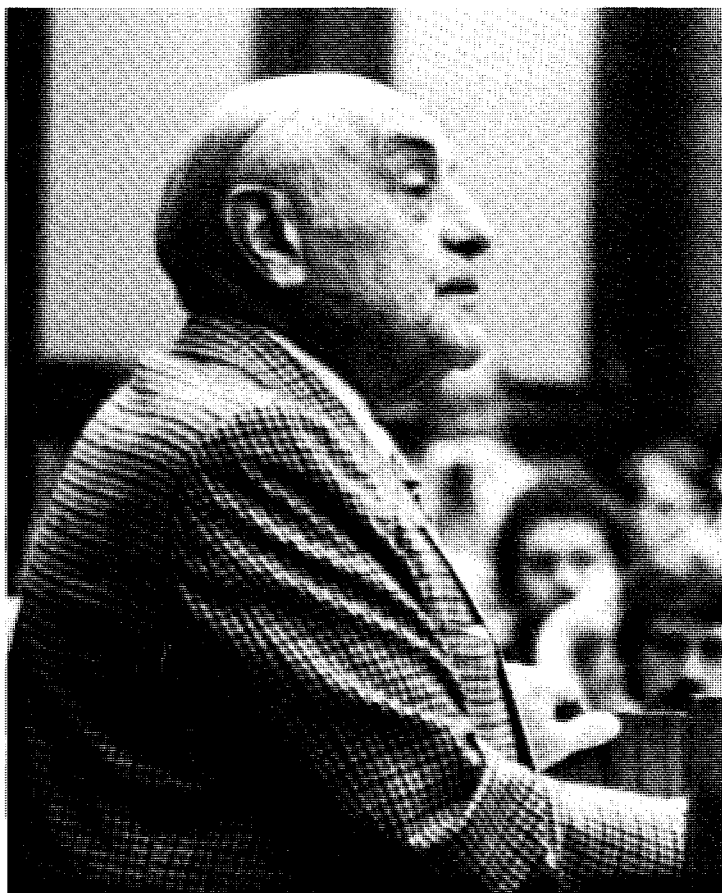
eral years to bring about and occupied much of Franklin S. Richards' time in his service to the church as General Counsel.

In 1906, Franklin S. Richards again stepped into the national limelight as the attention of America was once more focused on the Mormon Church, this time with the Senate Privileges and Elections Committee hearings on the seating of Senator Reed Smoot, an Apostle in the Council of the Twelve. Once again the issue of polygamy had been raised at the national level and seriously threatened the relationship between the church and the federal government. The first witness called to testify was Church President Joseph F. Smith who was forced to undergo intensive interrogation covering all aspects of church affairs. Seated at his side throughout the hearing was Franklin S. Richards in his capacity as General Counsel for the church, calmly advising the Prophet on all aspects of the inquiry, a service that was rendered likewise to several other church officials called to testify.

At their conclusion, the Smoot Hearings had resulted in bringing some degree of consternation to church officials, but for the most part, the church was able to weather the storm without any serious risk of again incurring the wrath of the federal government. As had become so characteristic of his work, Franklin S. Richards' service to the church had been invaluable.

For well over a half century, Richards continued to serve as General Counsel for the church with no apparent diminution in intensity or vigor. Although he remained in the center of political activity throughout his illustrious career, he never accepted or sought political office. His interests were concentrated on insuring that government clearly understood where its bounds were drawn insofar as individual rights were concerned. He saw law as the most important single avenue for the resolution of conflict, and as his patience at the height of crisis in the late 1880's had shown, he continued to demonstrate an unshakable faith in the American legal system. When he died in 1934 at the age of 85, he stood as one of the most prominent and highly regarded members of the Utah State Bar. His rise from reading law as Weber County Recorder to arguing in defense of the church at the bar of the U. S. Supreme Court within the short span of just over a decade is truly a legacy for Latter-day Saints and the law.





B.E. Witkin —

Expositor, Educator, and Entertainer

by Jack Haycock

"It is only in law schools that practice is regarded as a distasteful and alien intrusion upon the solemn task of teaching students to think. Afterwards, in the law office or the courtroom, before or behind the bench, we discover that learning is even more important in performing the daily chores of the lawyer or judge."

B E Witkin

Bernard E. Witkin, California's foremost legal writer and lecturer, aptly described as the "Dean of the California Legal Community" presented three lectures at the J. Reuben Law School from October 10 to 11. Witkin's unbounded knowledge of law and of precedent was used to illustrate, in his own methodical style, that in the courts anything can happen, and usually does.

Lecturing to Dean Lee and Professor Sabine's Appellate Advocacy class, Witkin exposed the uneven and prejudicial extraordinary writ procedure that has confounded the appellate process. Witkin labeled his talk "The Joys of Appeal and the Vagaries of Extraordinary Writs", and described it as, the union of appellate jurisdiction with its illegitimate partner, extraordinary writs. The author called for legislative reform to cure a nonsystem of

judicial decision making, undernourished by a deficiency in *stare decisis*. Witkin stated that he does not object to activist courts, so long as they apply any newly discovered justice equally to all people.

In his second speech, Witkin addressed an overflow crowd of law students and professors in the Moot Court Room. Speaking on "Look What's Happening to Contracts", Witkin proved that the common law can be most uncommon and that simple contracts can be anything but simple. Witkin denied that the law of contracts is stale and stated that "social and economic pressures acting upon bold judicial legislators have bent and twisted the doctrines of consent, consideration and performance into a new and exciting shape." Interjecting wit into legal analysis, Witkin illustrated the evolving five corner contract by reference to hornbook law — law not yet undermined by socially motivated courts — and by citing the foolproof contract — although it proved not to be courtproof.

Witkin described the borrowing from criminal law of diminished capacity for application to contracts as a concept conceived in a state "of wild cerebral turbulence." Further, to show that a contract

based on mutual mistakes can be valid, Professor Witkin cited an illuminating case employing a classic bar examination tactic: a one-in-a million factual setting. Finally, Witkin cautioned lawyers not to become distressed, because so long as the courts continue to produce precedent shattering and mind boggling slants on the bargaining process, "no computer will take business away from the lawyer."

Witkin's final lecture was to the authors and editors of the *B.Y.U. Journal of Legal Studies*. He hailed the first two editions of the *Journal's Summary of Utah Law* and encouraged *Journal* members to continue to provide lawyers with this necessary tool. The student members were told that there are no other better qualified persons than themselves to write law summaries. Witkin detailed the importance of distinguishing between the theory and the practice of law. As he left the room following his speech, Witkin was heard making verbal notes on what he would say next year to the members of "his" *Journal*.

B E Witkin has mastered summarizing, teaching and humorizing. To find Witkin's treasure chest is to apply Mr. Justice Frankfurter's advise not to reject wisdom merely because it comes late.

ON

by
Denver
Snuffer



The author, shown here with Mr Twain

The nervous, dapper, "peart" young man took the chair I offered him, and said he was connected with the Daily Thunderstorm, and added –

"Hoping it's no harm, I've come to interview you "

"Come to what?"

"Interview you "

"Ah! I see. Yes – yes, Um! Yes – yes."

I was not feeling bright that morning. Indeed, my powers seemed a bit under a cloud. However, I went to the bookcase, and when I had been looking six or seven minutes, I found I was obliged to refer to the young man. I said –

"How do you spell it?"

"Spell what?"

"Interview."

"Oh my goodness! What do you want to spell it for?"

"I don't want to spell it; I want to see what it means "

"Well, this is astonishing, I must say. I can tell you what it means, if you – if you –"

"Oh, all right! That will answer, and much obliged to you, too."

"In, in, ter, inter –"

"Then you spell it with an I?"

"Why certainly!"

"Oh, that is what took me so long."

"Why, my dear sir, what did you propose to spell it with?"

"Well, I – I – hardly know. I had the Unabridged, and I was ciphering around in the back end, hoping I might tree her among the pictures. But it's a very old edition."

"Why, my friend, they wouldn't have a picture of it in even the latest ed- My dear sir, I beg your pardon, I mean no harm in the world, but you do not look as – as – intelligent as I had

expected you would. No harm – I mean no harm at all."

"Oh, don't mention it! It has often been said, and by people who would not flatter and who could have no inducement to flatter, that I am quite remarkable in that way. Yes – yes; they always speak of it with rapture "

"I can easily imagine it. But about this interview. You know it is the custom, now, to interview any man who has become notorious "

"Indeed, I had not heard of it before. It must be very interesting. What do you do it with?"

"Ah, well, – well – well – this is disheartening. It ought to be done with a club in some cases; but customarily it consists in the interviewer asking questions and the interviewed answering them. It is all the rage now. Will you let me ask you certain questions calculated to bring out the salient points of your public and private history?"

"Oh, with pleasure – with pleasure. I have a very bad memory, but I hope you will not mind that. That is to say, it is an irregular memory – singularly irregular. Sometimes it goes in a gallop, and then again it will be as much as a fortnight passing a given point. This is a great grief to me "

"Oh, it is no matter, so you will try to do the best you can."

"I will. I will put my whole mind on it."

"Thanks. Are you ready to begin?"

"Ready "

from: An Encounter with An Interviewer

By Mark Twain

In order to truly "think like a lawyer" the young legal mind must have an eye toward employment. To be trained for the legal ministry without having any employ is of all things most fearful

Where does the young legal-trainee look for a place to peddle his skills? Many interview and find jobs on-campus. Others interview off-campus. Some interview not at all. (The last group usually has a parent or other close relative already in the profession.)

We shall hereinafter* examine the on-campus interview. The information contained hereinafter* has been gathered by the author and distorted to comport with his predilections. While this avoids the "aura" of objectivity, it is as objective as anything else.

Interviewing on-campus is always demeaning. It is demeaning to the interviewee if his class standing is too low. It is demeaning to the interviewer if the interviewee's class standing is too high. Taken altogether it is better to demean than to be demeaned. Therefore one is better off the higher his class standing.

*Pompous adverb generally appearing in student articles which are rarely read but are proudly displayed by the authors

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INTERVIEWING

Polls are almost without exception worthless. One thing is worth repeating, however. All but one individual polled thought the B.Y.U. Law School was first rate.

There are a number of recurring phenomena in the average interview. These may be accurately summarized as follows:

1 The "handshake" — a practice of dubious medieval origin requiring at least two people. It is often said that a "firm" handshake is best. As a general rule the softer and wetter the handshake, the worse the subsequent interview can be expected to be.

2 The "cordialities" — This includes such trite phrases and clichés as: "Hello,; how are you?"; "How do you do?"; "Where are you from?"; "How do you like law school?"; "Where's your resume?"; etc. Notice that these cordialities are more times than not meaningless interrogatories. Simple grunting responses are best, eg. "Uh"; "Welp"; "Fine"; "Naw"; "Don know"; etc.

3 The "reclining" — usually preceded by the interviewer saying: "Please,

be seated"; or "Take a seat"; or "Sit down"; or "Why are you standing, kid?"; etc. A good reclining is absolutely essential to a good interview.

4. The "Interrogation" — Typically a series of meaningless chatter designed to flush out any irregularities of speech or habit which could otherwise escape notice by a resume.

5 The "departure" — A strong departure is an invaluable tool in making that employable impression. Suggested departing statements are: "THANK YOU, AND GOOD-BYE"; "I appreciate your valuable time"; "Well, thanks"; "Gee, I hope I get the job."

To date, there are several interviewers coming on campus this year. It is anticipated that there will be more as the fall wears on.

If one interviews on-campus and is successful in obtaining employ, there is better than an 85% chance that he will remain in Utah or go to California or Arizona. These three states as always are over-represented. Other states which will

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Interviewing on-campus is always demeaning.

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be represented on-campus this year include Idaho, Washington, New York, and Florida.

A poll was taken by the author, but it revealed no significant results. Polls are almost without exception worthless. One thing is worth repeating, however. All but one individual polled thought the B.Y.U. Law School was first rate. The sole dissenter said it was fourth rate. The questionnaire asked the following:

From what you have seen or heard about B.Y.U.'s Law School, how would you rate it, given the following choices:

- A. First Rate; eg. on a par with Harvard, George Washington, etc.
- B. Second Rate; eg. on a par with University of Idaho, University of Alaska (do they have a L.S.?), etc.
- C. Third Rate; eg. on a par with LaSalle Correspondence Law School, etc.
- D. Fourth Rate; eg. on a par with the University of Utah.

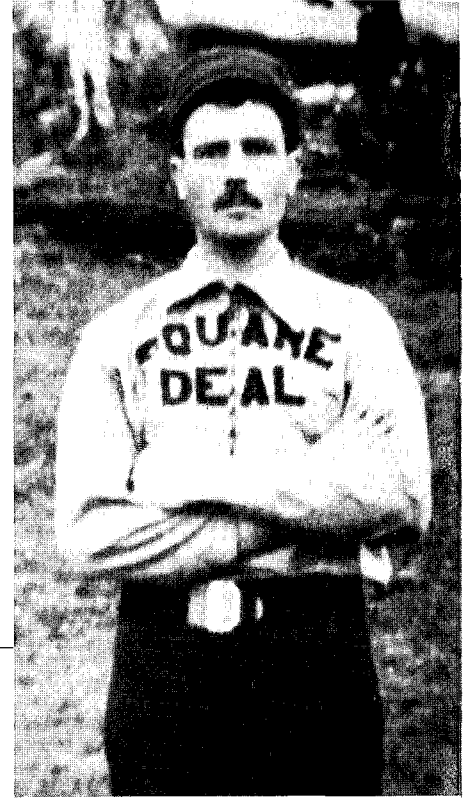
The question was written with the hopes of having our Law School rated overwhelmingly first rate, which it was. Next time I'll be sure to exclude U. of U. graduates from the poll — then the results should be unanimous.

IN SEARCH OF ALP

Recently, there has been a tremendous ground-swell of interest in Alphonso Bedoya (Alfonso Bedoya?) and in response thereto the Clark Memorandum has prepared this Funding for the necessary research involved in tracking Brother Bedoya down, although anonymously contributed, is purported to have been supplied by the Law Women, who share in the keen interest which surrounds this legendary character. Research into Brother Bedoya's history has been complicated by the fact that no one has established for a certainty what his middle name was. Accordingly, the *real* Alphonso Bedoya may be any one of the following illustrious individuals:

ALPHONSO "O'LEARY" BEDOYA

Alphonso "O'Leary" (hereinafter O'Leary) was a pioneer in legal advertising. He is shown here in the shirt evidencing the advertising that caused his disbarment. O'Leary never lost his flair, though he lost his license. Later in life he distinguished himself as a most successful encyclopedia salesman. His exploits as a salesman became legend and resulted in most of the Consumer Protection Legislation in the Northwest.



ALPHONSO "DUKE" BEDOYA

Alphonso "Duke" (hereinafter Duke) is shown here in a rare photograph. Duke was a gentle man known for his moderation in drink and laughter. His most serious indiscretion came on his wedding day, when indecision resulted in a polygamous relationship whose equal has never been found.



HONSO BEDOYA

by
Denver
Snuffer

ALPHONSO "PAPPY" BEDOYA

Alphonso "Pappy" (hereinafter Pappy) was known for his excesses. Pappy is shown here at age 23. This photo was taken at his fraternity house shortly after he was eliminated in the Moot Court competition conducted at his law school.



ALPHONSO "BRUCE" BEDOYA

Alphonso "Bruce" (hereinafter Bruce) is depicted here combing his nose-hair. Bruce was never able to grow facial hair and compensated by refusing to trim his nasal growth. Bruce, who never married, was rarely seen in public without a female companion.

ALPHONSO "JACK" BEDOYA

Jack's relationship to the legal profession has long been considered to be dubious in nature, but it is known that he "ghost-wrote" occasionally for a defunct underground newspaper. He is the unquestionable source of the "lonely hearts" image associated with the Bedoya line. Jack is shown here in a fantasy he dreamed of often and described to his fellow law students as a "fleecing." It was often said that Jack had a distinct paternalistic appeal, but was never able to "land the big one" largely due to the unmistakable odor of bait on his breath.



LEGISLATIVE DRAFTING SERVICE OR

If You Don't Like It — Re-write It!

by Matt Hilton

This year a new program was introduced at the law school entitled Legislative Drafting Service. The Service is designed to provide opportunities for second and third year law students to become involved in the practical aspects of the law on local, state and national levels. Presently, with the support of the A B A. Law Student Division, over thirty universities are encouraging this type of program. Already, our school has been given \$200 from the Law Student Division of the A B A to get the program going.

The program's idea and organization is fairly simple. The idea is to provide national, state and local service as well as giving law students a practical outlet for their academic learning. The ideas for the legislation which will be written and studied come from two sources. First, members of the community, state legislature, and other interested persons can contact the service directly with particular problems or individual needs that they would like to have drafted. Second, individual students with particular expertise in an area of law may initiate proposals on their own and draft the corresponding legislation. Students involved in seminars which require a major paper could choose topics which could also result in a legislative draft.

The proposals submitted for legislation will be initially reviewed and the final work product approved by a Board of Editors. The Board is composed of an Editor-in-Chief, three Executive Editors of national, state and local legislation, and a Managing Editor. Currently, the national, state and local editors are involved in directing major research on various proposals.

The national area will concentrate on two levels. One will be to submit proposed

legislation to the fifty state legislatures. The other deals with legislation which will be submitted to Congressional Committees for review. Patrice Tew, National Editor, is currently supervising two projects which will be submitted to all fifty states upon completion. The first project deals with formulating procedural rights

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The Legislative Drafting Service is here to stay. While it does not compete with any co-curricular program, it does offer a practical outlet for student creativity and input as well as provide a major service to the public by providing well-reasoned and well-written alternatives and options for those in legislative positions.

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and protections for children who, as victims of sexual abuse, are required to testify in criminal trials in behalf of the State. The second project deals with implementing and developing legislation affecting Nurse Practitioners. Currently, certified Nurse Practitioners (who are licensed in only four states) can do many of the routine duties of a doctor including issuing prescriptions. If more states would allow the licensing of practitioners, it could effectively decrease medical costs while at the same time increase the availability of medical service.

State Editor Dennis Judd is establishing a close working relationship with

the Utah legislature for the mutual benefit of both the legislature and the Legislative Drafting Service. Mr. John Memmot, director of legislative drafting for the legislature, is coordinating with Dennis the areas where student input can have the greatest impact. As his office is inundated with requests for legislative proposals — far more than can be handled there — many of these requests, depending upon student interest, will be sent to the Service for review and drafting. Students involved in such work will likely be called upon to testify at the appropriate committee hearings of the legislature when the bill is introduced and considered.

Local Editor, Chuck Hanna, is bringing his experience in the Orem City Attorney's Office to bear as he works both on local legislation and detailed studies of the legislation on a state level which impedes, inhibits, or encourages local action. Laws dealing with Sunday closings, snow removal and county water rights have been subjects requested thus far. The work in the local and state area could possibly overlap on occasion.

Students may become involved in this program and receive academic credit by either the Legislation class or Directed Readings/Research credit for two or more hours a semester. For every fifty-six hours of work invested in a project, a student will receive one hour of credit.

Initially, to get involved, the interested student must comply with two administrative requirements besides signing up for the appropriate class in the appropriate semester. First, the student should meet with one of the editors and indicate a preference for working on a project already begun or propose a new one of personal interest. After the topic is decided upon, the student must become

familiar with how legislation and statutes are drafted. A simple pass-fail test must be completed before research can begin. The student would then, under the limited supervision of an editor, begin work on the individual project. Then draft and the

The service is designed to provide opportunities for second and third year law students to become involved in the practical aspects of the law on local, state and national levels.

supportive memorandum would be reviewed and revised by the student and by the appropriate editor. The grade for this effort would be a pass/fail grade in the Legislation class.

The second level of involvement is the independent directed research and readings level. Professor James Sabine, the Service's adviser and resident expert on legislation, would be the faculty member sponsoring the credit for directed studies. A student who had completed the Legislation class or demonstrated competence in research and drafting skills would submit a proposal to Mr. Sabine for approval. Upon approval, the student has one year to complete the project. Credit, therefore, could be taken in the fall for non-salaried work done over the summer. Research work done at an earlier time may provide the basis for the legislation worked on as an independent project. An example of this independent work is evidenced in the work of Matt Hilton, Editor-in-Chief.

Several years ago, out of personal interest, Matt began a detailed study of the effectiveness of the Army R.O.T.C. program in the West. With non-funded encouragement from local Army commanders, cadets from the ten schools that commissioned the most lieutenants from 1974-1976 were sampled over a three-year period. Nearly 500 samples provided specific data which, with a 95% certainty, indicated serious problems with the R.O.T.C. program. However, upon close examination, some of the problems encountered, concerning both training and active duty, were caused by legislation which required the awarding of a significant number of four-year scholarships. Last year \$14,000,000 was spent by the

Army in achieving the award of 6,500 scholarships. However, the study indicated that (1) cadets on scholarship had not distinguished themselves enough in either training, active duty or career plans to justify such an award; (2) the significant statutorily required limitation on the number of scholarships available to veterans was counter-productive as two-year program veterans had a seven to one advantage in favoring career status in the Army when compared to non-veteran two-year program members; and (3) the cadets who were trained in the four-year program did not perform any different than those in the two-year program.

Even though national military leaders were approached with this information, they discouraged any further investigation of these major problems and indicated they did not want any additional non-Army personnel involvement in such research. Therefore, as there were no other realistic alternatives but to proceed as an individual, Matt submitted the study with suggested legislation to correct the most glaring problems to the Senate Armed Forces Committee where it is currently under review. Had the study been taken seriously when it was first proffered to Army leaders, the Army R.O.T.C. could have profited from the proposed legislation and saved over \$5,000,000 during the fiscal year 1979-80. Further implementation of the study's conclusions in the areas of active duty and recruiting could also result in significant savings. While not all independent projects need to go to this level to be valuable, it serves as an example of what those involved in the service can accomplish.

The Legislative Drafting Service is here to stay. While it does not compete with any co-curricular program, it does offer a practical outlet for student creativity and input as well as provide a major service to the public by providing well-reasoned and well-written alternatives and options for those in legislative positions. Such a service is indicative of what we as future attorneys should be very cognizant of — serving others through the law so as to create a more stable and sound society. The cooperation of Dean Rex Lee and Professor James Sabine, in conjunction with the funding and encouragement from A.B.A./L.S.D., have combined to offer students at the J. Reuben Clark Law School a real opportunity to put into effect, through service, that which they are presently learning.

Was It All Worth It?

by Travis Lyle Bowen

During the last month or so, Utah newspapers, including the *Daily Universe*, have run a story on a 74-year-old B.Y.U. freshman, a retired Salt Lake City lawyer. Law students might be interested to learn how Ferris S. Jensen obtained his law degree.

Brother Jensen did not finish high school. There were debts. "Job followed job. Then came a mission to Holland; then marriage; then family. The elusive goal of freedom from debt and further education seemed farther and farther away."

He went to work at Walker Bank, in Salt Lake City, where, using skills acquired from his father, he began to prepare deeds, mortgages, contracts, and other legal documents. This was moonlighting, so to speak, since he used lunch hours and time at home to do this type of quasi-legal work.

"Then came the depression . . . One day, one of the officers of the bank came to my window, with a delegation of lawyers. They sternly informed me that my 'practice of law,' as they put it, had to stop. There were too many hungry lawyers, and a law passed by the 1927 legislature, but not theretofore enforced, made it unlawful for those not members of the bar, to practice law, prepare legal documents, or give legal advice."

Upset at his loss of income, Brother Jensen enrolled in the LaSalle Extension University law course.

For a year, he submitted lessons on schedule. Then a good friend of his, president of the Utah State Bar Association, paid him a visit. After March, 1934, no person could take the Utah State bar exam without having graduated from a university before commencing law study.

So Brother Jensen, a high school dropout, made a dramatic decision: He talked the problem over with his wife, left his job at the bank (September, 1934), and, accelerating his course of study, began a six-month cram for the bar exam.

"Oh, how I crammed! Each day I would study for two hours before breakfast, then two hours after breakfast; then a break, then two more hours before lunch. After lunch it was more of the same—two hours study; then a break; then two more hours; then dinner; then two more hours. And I would fall exhausted into bed . . . There was no study on Sunday. That was the one day for family and church."

"The examination was tough. It lasted all day, every day, for a week. To pass, we were required to attain a passing grade in every exam. . . . All I could do was give it the best I had, and hope and pray. Twenty-three hopeful applicants took the exam—the others being from the University of Utah, Stanford, George Washington, and even Oxford, all university graduates."

Not long afterwards, friends from the bar association began to leak news to Brother Jensen, only he had passed the tough Tuesday exam, on mortgages, only one examinee had passed the bar exam—Ferris S. Jensen, the high school dropout.

The examiners faced a problem. They could not admit to the practice of law the only applicant with no university education. The solution? Admit Jensen, plus those with the next seven highest scores.

That's how Ferris S. Jensen became a lawyer. Now he is back to begin his college education.

Student Bar Association Board of Governors 1979-80

SBA PRESIDENT - TERRY TURNER

A native of Salt Lake City, Utah, Terry graduated from the University of Utah in 1977 with a B A in Political Science. He served as an intern in the Utah State Legislature for one year and also spent one year as a research assistant to Utah's Congressional delegation in Washington, D C. He was elected to the Board of Governors at JRCLS as First Year Representative shortly after entering law school, and was subsequently elected again as Second Year Representative. He has been active in the Moot Court Cocurricular program and this year has been a member of the national team. Terry is also a member of Phi Delta Phi Legal Fraternity. He served a mission in Mexico from 1972-74, and since then has returned twice to Mexico and Central America as an interpreter for BYU archeological expeditions. Terry is married to the former Miss Kim Sandberg; they and their two children reside in Provo.

EXECUTIVE VICE PRESIDENT - JUNE BABIRACKI

June is from Granddada Hills, California, where she hopes eventually to return to practice after law school. She was active in student government at BYU as an undergraduate, and brings to the Board of Governors a significant degree of skill and experience in student affairs. As Executive Vice President, she has the responsibility of also serving as the representative to the Law Student Division of the ABA. She is currently an editor for the Journal of Legal Studies and serves as Justice for the Cowley Chapter of the Phi Alpha Delta Law Fraternity. June devotes much of her spare time to the study of the Polish language and is also an avid skier, having established her proficiency in that sport by obtaining her instructor certification.

FINANCIAL VICE PRESIDENT - GLEN DAWSON

Glen is a native of Roy, Utah, and a 1977 graduate of Weber State College where he majored in Accounting. While at Weber he was a member of Phi Kappa Phi and Blue Key National Honor Fraternity, and in his senior year was selected as Scholar of the Year. He was a Legislative Intern to Rep. Ron Halverson of Ogden who at the time was House Majority Leader of the Utah State House of Representatives. Glen is currently an editor for the Journal of Legal Studies and is a member of the Delta Theta Phi Law Fraternity. He has been an Academic Scholarship recipient for all of his three years at JRCLS and will graduate in April in the top 20% of the class. Glen served a mission to Northern California from 1971-73. Upon graduation, he will begin work for the Justice Department in Washington, D C.

RECORDS VICE PRESIDENT - TIM EGBERT

Tim's home is Santa Barbara, California, and he is a graduate of Brigham Young University, receiving his B S in Mechanical Engineering in 1974, and his M S. in the same field in 1975. He is a member of the American Society of Mechanical Engineers, and the Tau Beta Phi Honor Society. At JRCLS, Tim has been active with the Journal of Legal Studies, both as an author and an editor. His interests are primarily in products liability litigation, which his background in mechanical engineering and numerous professional publications have suited him well for. Tim served a two-year mission to Taiwan and speaks fluent Mandarin. Upon graduation he plans to practice law in Kansas City, Missouri. As Records V P, Tim has been responsible for publication of all SBA Board of Governors meetings.

CLARK MEMORANDUM EDITOR - MIKE ELDREDGE

Born and raised in Ogden, Utah, Mike graduated from Weber State College in 1971 with a B A in Political Science. He received his M A in International Relations at Utah State University in 1972 where he also served as Graduate Student Body President. A Vietnam veteran, Mike served five years as a Naval Officer, the last two years of which he was assigned as an assistant professor at UCLA and seminar instructor at the U S Naval Academy in Annapolis, Md. He is an editor for the Journal of Legal Studies at JRCLS and also a member of the Delta Theta Phi Law Fraternity. Mike also serves as editor for the ABA/LSD Tenth Circuit Newsletter and is a member of the Tenth Circuit Cabinet. A December graduate, Mike plans to hang his shingle in Ogden, where he and his wife, the former Miss Mona Johnson, currently reside with their three children.

THIRD YEAR REPRESENTATIVE - GREG BURR

Greg is from Walnut Creek, California. He graduated from Brigham Young University with a B A in history in 1975. He completed his first year of law school at Southern Methodist University in Dallas, Texas, before coming to the J. Reuben Clark Law School. Aside from his responsibilities representing the Third Year Class on the SBA Board, Greg is Chairman of the Graduation Committee and is the Magister of the George Sutherland Inn of Phi Delta Phi. Greg served a mission to Chile from 1969 to 1970. He devotes his spare time to languages, music, and bicycling. Upon graduation, Greg will enter active duty with the U S. Navy JAG Corps.

June Babiracki

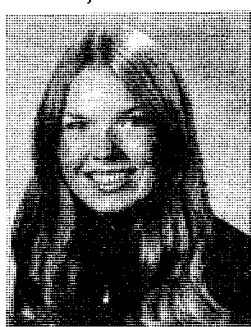
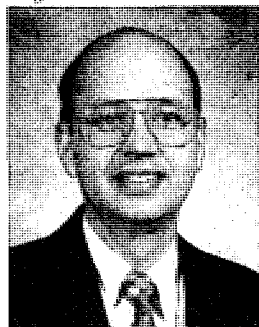
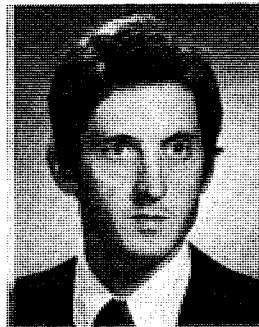
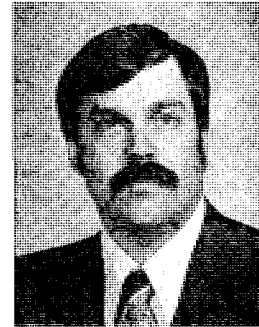
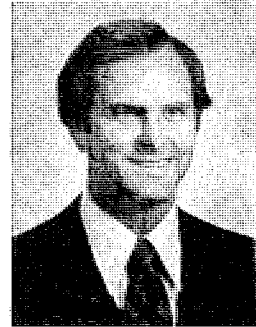
Greg Burr

Glen Dawson

Tim Egbert

Mike Eldredge

Jack Haystack



**SECOND YEAR REPRESENTATIVE -
MATT HILTON**

A native of Walnut Creek, California, Matt graduated from BYU with a B A summa cum laude in History in 1978. He was a 1977 nominee for Rhodes Scholar and Danforth Scholar, and a member of Phi Kappa Phi, Phi Alpha Theta, and Phi Eta Sigma honor fraternities. Matt has also served as National Chairman of Manuscript Research for the Sons of the American Revolution and project director for the U S Army ROTC Region 14 Motivation Study. At the ABA/LSJ level, Matt has assumed the responsibility for organizing and directing the Legislative Drafting Program at JRCLS and will be a delegate to the Tenth Circuit Spring Conference at Laramie in March. He is also an active member of the Phi Delta Phi Legal Fraternity, the American Trial Lawyers Association and a grade on member of the Law Review. Matt served a Mission to Guatemala and El Salvador in 1973-75. His favorite pastimes include intramural sports in football, water polo and basketball.

**FIRST YEAR REPRESENTATIVE -
KURT KRIEGER**

Kurt is from Portland, Oregon, and a 1979 graduate of BYU in Communications. At BYU as an undergraduate, Kurt was active with the Kappa Tau Alpha National Honor Society of Journalism and Vice President of the BYU Pre-Law Association. Kurt has had experience in photography and journalism, and has worked extensively as a darkroom technician. As a member of the SBA Board of Governors, he has been responsible for several activities, many of which have given the first year class the reputation of being the most active group of newcomers in years. Kurt served a mission to Guatemala and El Salvador from 1975 to 1977. He is married to the former Miss Deanne Lisonbee, they have one daughter, Jana Joy.

**ACADEMICS CO-CHAIRMAN -
DAVE WATSON**

Dave is a native of St. George, Utah and is a 1977 graduate of Weber State College where he majored in Accounting. During his last three years at WSC Dave received athletic and Presidential scholarships, and was a member of the Phi Kappa Phi Honor Fraternity. While in his second year at JRCLS he passed the Certified Public Accounts Exam in November, 1978. As Academics Co-Chairman, Dave has been responsible in part for the numerous speakers at SBA Brownbag lectures and most recently has spearheaded the drive to establish a new student lounge at the law school. Shortly before serving a Mission to Germany, Dave was runner-up in the 1970 Utah State Amateur Golf Tournament at the tender age of 18. Since coming to JRCLS Dave has been known to hustle a few unwary law students, and has even gone so far as to set up a law school tournament and then win it. Dave, his wife and their two children currently reside in Orem.

**ACADEMICS CO-CHAIRMAN -
JACK HAYCOCK**

Jack is from Sacramento, California, and is a 1977 graduate of the University of California at Davis where he received a BA degree in International Relations. In 1971 Jack was named one of the "Ten Outstanding Youths of Sacramento" by the Junior Chamber of Commerce, and in 1973 he began a two year mission to Colombia. Since coming to JRCLS, Jack has been an author and editor for the Journal of Legal Studies, and has also been active as a member of the American Trial Lawyers Association. Along with Dave Watson, Jack shares the credit for the highly successful Brownbag lectures at the law school this year. An avid sports enthusiast, Jack spends much of his spare time playing or watching football, basketball, and softball. Upon graduation Jack hopes to return to Sacramento to practice law.

**STUDENTLIFE CHAIRWOMAN -
SHARI PERKINS**

A native of Richland, Washington, Shari is a 1978 graduate of BYU with a major in Sociology/Social Work. As an undergraduate, Shari was Studentbody Executive Officer for ASBYU and the recipient of numerous awards and honors including National Woman of the Year Among Colleges and Universities. Most recently she was selected as the Outstanding Young Woman of the Year for the State of Utah, 1979-80. She has had experience as a legislative intern for the Utah State Legislature, and also served as an assistant to Congressman Mike McCormack in the U.S. House of Representatives. Since coming to JRCLS Shari has been active in the Association of Women in Law and the Phi Delta Phi Legal Fraternity. Her responsibilities on the Board of Governors have included the organization and planning for all SBA sponsored social activities, as well as numerous other responsibilities for which her experience in student government has made her well suited.

**PUBLICITY CHAIRMAN -
MARK HOWARD**

Mark received both his Bachelor's and Master of Accountancy Degrees from BYU in August, 1978, and has passed all sections of the Certified Public Accountant's exam. He is a member of Phi Kappa Phi and Beta Alpha Psi Honor Fraternities and the recipient of numerous scholarships and awards. He has worked extensively as a research consultant in accounting, and has also been employed as a staff instructor in the Accounting Department at BYU. Mark is the recipient of a Merit Scholarship at JRCLS, is an author for the Journal of Legal Studies and is a member of the Phi Delta Phi Legal Fraternity. As publicity Chairman, Mark is responsible for all internal and external publicity for SBA sponsored activities. Mark fulfilled a mission to Colombia in 1972-74 and is married.

Matt Hilton

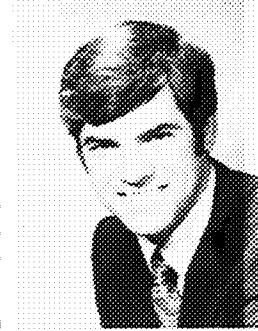
Mark Howard

Kurt Krieger

Shari Perkins

Jerry Turner

Dave Watson



ALUMNI NEWS

The recent publication of "The Brethren" has prompted many comments from various points across the spectrum of the legal profession, not the least of which are those views held by one of JRCLS's Supreme Court clerks, **Eric Andersen**.

Eric revealed mixed emotions about the book when reached at his home in Virginia. Since the interviews with law clerks by Bernstein and Armstrong were completed with the 1975 term, Eric was not among those questioned by the reporters. Nevertheless, he was acquainted with many who were interviewed and was able to make salient observations about their experiences and relate them to his own experience as a clerk to Justice Lewis F. Powell.

"The Court," explained Eric, "is certainly far from perfect and the justices are not above criticism; but the book [The Brethren] is unfair in its obvious bias against the Chief Justice." This overt bias against the Chief Justice and the sensationalistic journalism approach by Bernstein and Armstrong does not result in a

significant contribution to the history of the court.

The authors' approach places the book more accurately in a class of historical novel along the lines of Catherine Drinker Bowen, where some facts are known but much is left to historical speculation and conjecture. "Some clerks were very active in their support for Bernstein and Armstrong, while others did not realize that conversations made in good faith were being used as the basis for certain assertions made by the authors," Eric continued. "In fact, many assertions made by the authors are widely known to be false and inaccurate, and other observations would have been virtually impossible to substantiate."

The book does have value in revealing some of the inner workings of the court and the pressures that exist in the Supreme Court. As for clerking at the Supreme Court, Eric described it as "Marvelous! I wouldn't have missed it for anything."

Former BYU law student and SBA President **Ben Hatfield** is practicing law in Brigham City, Utah. Ben is a member of the firm Mann, Hatfield and Thorn. The firm does general litigation.

The law firm of Martineau, Rooker, Larsen and Kimball has turned into quite the JRCLS family. **Keith Rooker** and **Dale Kimball** have both participated as faculty members at JRCLS. They have hired as associates: **Robert Grow** and **Robert Johnson** of the class of 1975 and **James Swindler** and **Niel Christensen** of the class of 1978.

Paul Toscano of the class of 1978 returned to the JRCLS to give a talk to the student body about his recently published article in the Law Review on the dubious neutrality the Supreme Court has assumed under the First Amendment religion clauses. Paul is practicing law in Orem with a small law firm, and is an adjunct instructor for the BYU College of Education.

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