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CLARK MEMORANDUM

J. Reuben Clark

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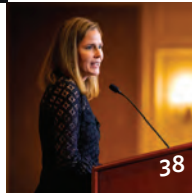
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SEEING RELIGIOUS PERSECUTION

A BYU LAW ALUM'S ASCENT



**D. Gordon Smith, PUBLISHER**  
**Lynnett Rands, EXECUTIVE EDITOR**  
**Amberly Page, EDITOR**  
**Lena Harper Primosch, ASSOCIATE EDITOR**  
**David Eliason, ART DIRECTOR**  
**Bradley Slade, PHOTOGRAPHER**

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It was a Monday morning in Barcelona when I learned the news by email, then clicked over to Facebook to see the confirmation from her family: “Wendy C. passed away tonight. She went peacefully and surrounded by love.” Wendy Archibald had served as the Law School’s dean of students and internal affairs since 2008, the year after my arrival at BYU. We worked together closely during my time as associate dean and even more closely during my first three years as dean. It was not supposed to end like this.

Wendy was diagnosed with cancer in late August of last year. She was dedicated to the Law School, and she kept coming to the office through late September, just days before undergoing surgery to biopsy a brain tumor. Although she was judged to be a candidate for immunotherapy, which seemed like good news at the time, she suffered unexpected setbacks after that initial surgery. As a result, the doctor recommended no visitors outside of the immediate family while she was in therapy. In early November she needed another surgery to address a brain hemorrhage, and after that second surgery, we never spoke again.

Wendy had many gifts, but most prominent was her ability to make everyone feel valued and respected. In response to the announcement of her passing, many former students expressed their gratitude to Wendy, saying that she was the reason they survived law school. Hundreds of people attended her funeral, at which members of the Tabernacle Choir and others sang “Alleluia” by Giulio Caccini, to, in the words of Wendy’s husband, “usher her into heaven with a choir of angels.”

As I listened to the tributes to Wendy at her funeral, I reflected on our last interactions in September. We had talked about who would cover her varied responsibilities during her absence. We had talked about the process of going on disability. We had talked about her family. We had talked about when we might expect her to return to the Law School. Although I knew her diagnosis was serious, we did not talk about the possibility that she might not return. In the immediate wake of her diagnosis, all of us were still hoping for a miracle recovery, and it did not feel appropriate to talk about the possibility that she might not survive. That would have felt like a concession, like a failure of hope. As it turned out, all of us were startled at the pace of her decline, and too many things were left unsaid.

Over the years I had expressed my gratitude to Wendy on various occasions for her good work on this or that project or for her intervention with this or that student. But I had never taken the opportunity to express my appreciation for the sum of her work, for all that she had done for the Law School and for me personally. Perhaps occasional expressions of gratitude should suffice, but as I sat in her funeral, I regretted not having said more.

That I happened to be in Barcelona when I heard of her passing was entirely appropriate because Wendy had served a mission there, and she loved Spain. The day after I received the news of her passing, I visited the *Basílica de la Sagrada Família*, a large unfinished Roman Catholic basilica designed by Catalan architect Antoni Gaudí. I entered the building as the sun, which was setting in the west, caused brilliant reds, yellows, oranges, and greens to spray through the stained-glass mosaics. I was still thinking about Wendy, and it occurred to me that she must have loved those mosaics as a young missionary. Each piece of cut glass was just a fragment, but every piece was essential to create the magnificent community of colors. If even one piece were missing, you would recognize that the mosaic was incomplete. Wendy treated the people around her like that—like essential pieces in a beautiful mosaic.

I returned to Utah just in time to attend Wendy’s funeral. When I walked into the foyer of the church building, I was greeted by a table display of mementos from Wendy’s life, including a print of the *Basílica de la Sagrada Família*. Pondering those mosaics, I have decided to take more time to speak with the many people who make my life and my work better. I want them to know that they are part of the mosaic that brings light and joy to my life. Those things should never be left unsaid.



D. GORDON SMITH

Dean, BYU Law School

BY ELDER PATRICK KEARON

*General Authority Seventy,  
The Church of Jesus Christ of Latter-day Saints*

OF RIGHTS AND RESPONSIBILITIES

# THE SOCIAL ECOSYSTEM OF RELIGIOUS FREEDOM

**The subject of religious freedom** continues to raise new questions. We have come to learn a little more from many of the most able minds and willing hearts in the field. If we listen to each other carefully, we will be better equipped to meet the challenges and opportunities of today and tomorrow.

Most of us drink from the waters of religious freedom without even knowing it. We think of them as a river that will always flow. But we might not recognize the risks to the tributaries that feed that river.

The perpetuation of religious liberty requires that it be understood and valued by the rising generations. There is a need for them to comprehend what religious freedom brings to society and what is lost when this liberty is eroded. When young people come to understand why this freedom is crucial to their own aspirations, welfare, and happiness, they will feel inspired to act to strengthen and preserve religious freedom.





*The following  
address was  
delivered at  
the Religious  
Freedom  
Annual Review  
at BYU Law  
on June 19,  
2019.*

## Community and Commitment

To better understand the freedoms we now enjoy, we can look to history. My parents came from what you in the United States call the Greatest Generation. They both served in the British Armed Forces in World War II—my father in the Royal Air Force and my mother in the British Army as a nurse. Between them they served across Europe, North Africa, India, and Burma. They fought for their neighbors, they fought in defense of their homeland, and they certainly fought for religious freedom, but I don't suppose that was a phrase they would have used at the time. With so many others, they warded off the tyranny of Nazism. So many freedoms were on the line, and that generation gave everything they had in their defense. Vast swaths of Europe were overrun, with massive casualties. Whole nations were subjugated by tyrants whose aim was to not only conquer and suppress freedoms, including religious freedom, but wipe out and destroy people of particular ethnic backgrounds, faiths, and beliefs. The generation that confronted these demonic threats did so with phenomenal courage. It took a society that possessed a highly developed social solidarity and mutual accountability to bring about such a moral achievement.

After six unspeakably harrowing years, the war was won. In the ensuing years, those who had experienced this conflict saw society through the lens of that experience. After a decade or two, they observed the next generation, which had not been where they had been nor confronted what they had seen. These young people became concerned with what in many cases the wartime generation regarded as lesser things. The cohesion that had come from shared hardship borne of an existential threat began to wear off. I was a child through part of this period.

The protests of the 1960s found their way onto our television screens. What the protests exhibited in raw emotional power, they often lacked in sustained social commitment. These actions ranged from bus boycotts to opposition of the Vietnam War to campus protests over student fees. They were all motivated by worthy purposes, but these purposes were limited on their own without the continuous obligations borne of shared vision and purpose. Of course protest is a vital function in a democracy, and free people are free because they are able to challenge the status quo and those they have elected. But during those years, the youth of Britain sometimes appeared to protest for its own sake. My parents lamented the shift toward a mindset of rights with no apparent regard for or reference to responsibilities. The two must work together; passion and duty must connect. And that concept is what I would like to address—our rights and the responsibilities associated with those rights.

Today it might appear to some that rights just happen—that they are automatically inherited and perpetuated without thought or effort. We can forget the extraordinary struggle, resolve, and sacrifice that went into protecting our abundance. We may rarely think about our obligations to keep those rights in place.



## The Heart of Religious Freedom

For a time, I lived in a country that did not allow the free expression of religion. I witnessed how people who dared to stray from the official line could be punished. Unfortunately, this continues today in many nations across the globe. Violation of religious freedom is one of the main reasons why we see so many refugees and displaced people today. Religious difference becomes religious alienation, alienation turns into persecution, and persecution turns into conflict, war, and mass flight. These crises happen when freedoms, including religious freedom and freedom of conscience, are not protected. Regimes target those who believe differently; they force them from their homes and uproot them in terrifying ways.

In 2015 and 2016, from one end of Europe to the other, I saw firsthand as countless ordinary people were driven from their homes and lands farther to the east across countries and continents in search of safety and refuge. Often their beliefs were a factor in why they were displaced. Hatred and terror drove these people from their homes.

The world needs places of refuge from such extremism. Where liberty thrives, it flows almost invisibly. We experience the benefits of it all the time but rarely see how it actually works. Religious liberty acts as the heart of society, a key contributor carrying the lifeblood of all that is good to the whole community.

Healthy societies run on trust, confidence, and a sense of safety. With freedom of religion and belief, people feel safe in their deepest convictions and can express and exercise them publicly. The great enemy of religious freedom is estrangement and alienation. When a society or government divides people based on what they believe, how they think, the words they say, whom they worship, or the manner in which they worship, common ground is lost, and life together becomes a battle. The test of a pluralistic society is to achieve unity without diminishing the diversity within it.

Religious freedom means nothing if you protect your own religious practice while neglecting the practice of others, especially those who might be less secure or unable to defend themselves. It only works if you protect the rights of everyone. As Elder D. Todd Christofferson, a member of the Quorum of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints, has said, religious freedom is important precisely because it gives everyone—religious or not—the “space to determine for ourselves what we think and believe.”<sup>1</sup> In terms of numbers and inherited culture, the United States has a Christian majority, but unless it honors the lawful practices of Hindus, Sikhs, Muslims, Jews, Buddhists, Native Americans, individuals and groups who profess no faith at all, and everyone else, it will fail to live up to its own ideals.<sup>2</sup>

We all need to be consistent in defending and respecting everyone. And doing so does not mean you have to diminish your own beliefs. That is how all our rights will be taken seriously. We can't pick and choose who gets what rights. Every religion is susceptible to the fluctuations of prominence and obscurity. The cultural group that enjoys privilege today may lose it tomorrow, even in nations in which the rule of law and democratic principles have been enshrined for centuries.



*Kos, Greece, October 11, 2015:  
Volunteers give a hand to refugees  
from Afghanistan arriving  
at the island of Kos from Turkey  
on a dinghy boat.*



*Lesbos, Greece, October 25, 2015:  
A group of Iraqi refugees from Mosul  
rest on the north coast of Lesbos  
after having completed the dangerous  
boat journey from Turkey.*





Having a broad view of religious liberty helps us see that it is universal, not just the preservation of those who are powerful or popular. Religious freedom is suprapolitical, something that is part of our nature before politics declares it to be so. Every person, regardless of religion, race, gender, orientation, or nationality, possesses fundamental rights simply by being human. These rights include the right to life, liberty, security, equal protection of the law, and freedom of thought, speech, and religion, as well as protection from political extremism. But we all must remember, be taught, and pass on the responsibilities that come with these rights.

Rights are inscribed in laws, constitutions, and charters the world over, but they were first imprinted in the human heart by a loving God. One of the founders of this nation, Alexander Hamilton, wrote:

*The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam, in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power.<sup>3</sup>*

Though these inalienable rights come from above, they still have to be cultivated by human beings below. It is up to us—it is the responsibility associated with these rights—to implement, protect, and anchor them in our daily lives.

### Two Sides of the Religious Freedom Coin

Rights and responsibilities can't be separated without negative consequences. The symbiosis between rights and responsibilities is often lost in the rush to demand that something be given to us while forgetting to foster the conditions in which that right can be respected or have meaning.

*Camp Pendleton, California, April 28, 2012: "Mormon Helping Hands" volunteers from The Church of Jesus Christ of Latter-day Saints help spruce up the School of Infantry West's Caruso Memorial Chapel.*





Appropriately exercised, rights and responsibilities move in a virtuous circle. We are more inclined to honor the rights of people when we know them personally and feel a sense of responsibility for their well-being. Meaning in life comes from giving yourself to others, not demanding that others give to you. Author and commentator David Brooks has written that joy comes from commitment:

*In reality, the people who live best tie themselves down. They don't ask: What cool thing can I do next? They ask: What is my responsibility here? They respond to some problem or get called out of themselves by a deep love.*

*By planting themselves in one neighborhood, one organization or one mission, they earn trust. They have the freedom to make a lasting difference. It's the chains we choose that set us free.<sup>4</sup>*

Important work in religious freedom is found in walking a mile with your brother and sister, listening to a stranger talk about their religious experience, and employing the gentle efforts of dialogue and persuasion.

The study of religious liberty has so many facets and nuances that it can be dizzying. The conversation often focuses on the law—what it is, what it should be, what it protects, what it should protect, how it sets boundaries, and so on. Law is vital and is an essential part of a bigger picture. However, rights act more like habits than dry edicts. Law and custom must work together.

Behind every right, if we look closely enough, stand layers upon layers of social practices that regulate innumerable human interactions in societies, families, marriages, friendships, and all human relationships. They are called norms, and they require innumerable transactions of give-and-take. The demands we make of the law only make sense when embedded in a web of countless norms that make our society possible. We need to keep finding ways to align what we demand with what we can contribute to our families, workplaces, neighborhoods, churches, schools, and communities.

Understanding and appreciation of religious freedom will need to move from the exclusive realm of specialists to a much broader audience. It will need to include those who don't grasp the intricacies of the law or have the capacity to influence the law in conventional ways.

To do this we will need to reframe our own understanding of and more effectively articulate what this freedom means and the responsibility it brings. We have a particular obligation to carry this knowledge to a younger audience who will be charged to see these freedoms protected and responsibilities fulfilled in the coming years.

### A Challenge to Embrace

---

Many in the rising generation today are concerned about serving those in need, making a difference, changing the world, and helping their community. They seek morality and responsibility, and they understand the language of universality. Our young people can be jaded by exclusion, inconsistent application of laws, and the entrenched interests of a few to the detriment of many. They are attuned to the authentic. They are outward looking and deeply sensitive to treating people fairly and equally. Their yearning to serve is deep. All of this is wonderful and promising!

But on the whole, the religiosity of young people is shifting. They are much less inclined to identify with a particular religion,<sup>5</sup> let alone attend church. They can see religion as stifling their values of inclusion and tolerance. But it touches not only the youth; the trend toward a secularized public life affects all ages. One of the results is that our culture is fragmenting into cultural and ideological tribes.

President Gordon B. Hinckley, former president of The Church of Jesus Christ of Latter-day Saints, once said, "Men everywhere seem to be groping as in darkness, casting aside the traditions that were the strength of our society yet unable to find a new star to guide them."<sup>6</sup>

+++  
MEANING  
IN LIFE  
COMES FROM  
GIVING  
YOURSELF TO  
OTHERS.  
+++



Moorhead, Minnesota,  
 April 25, 2009:  
 Ronald “Archie” Derle,  
 a volunteer from the  
 Anoka Stake of The  
 Church of Jesus Christ  
 of Latter-day Saints,  
 puts some muscle into  
 it as he hauls away  
 another load of used  
 sandbags cleared  
 from a Clay County  
 property.



MIKE MOORE / FEMA

+++  
 INFLUENCING  
 SOCIETY  
 ALWAYS SEEMS  
 TO BE THE  
 JOB OF  
 SOMEONE  
 ELSE....  
 BUT ... THERE  
 IS NO  
 “SOMEONE ELSE.”  
 THERE IS  
 ONLY US.

+++

Peter Beinart, a writer and political science professor at City University of New York, has seen a connection between decreasing religious activity and increasing political conflict. He recently wrote:

*Maybe religion builds habits and networks that help people better weather national traumas, and thus retain their faith that the system works. For whatever reason, secularization isn't easing political conflict. It's making American politics even more convulsive and zero-sum.<sup>7</sup>*

We can help fill this void with positive messages and constructive actions. There is a need and opportunity for religious freedom to be framed differently and to be more clearly understood.

### Be a Force in the World

Do we fear the world more than we shape it? Do we let our anxieties prevent us from making a difference? Do we spend more time hiding from society's flaws than fixing its problems?

How we answer these questions determines what our social environment looks like. It is always changing, and it improves or deteriorates depending on our actions. Society is not something that just happens to us; it is something we help shape.

The main thing is to engage, dialogue, bridge, and interact with people of all sorts. Unless we participate, we lose our ability to both influence the world and learn from it. As British novelist E. M. Forster put it, “Only connect! . . . Live in fragments no longer.”<sup>8</sup>

We all have a stake in this debate. “No man is an island, entire of itself; every man is a piece of the continent, a part of the main.”<sup>9</sup> The poet John Donne wrote these words nearly 400 years ago, but they still resonate today.

Contributing to the good of society is part of our spiritual stewardship. Jesus taught His followers to be “the light of the world” (Matthew 5:14) and “the salt of the earth” (Matthew 5:13). Let your light shine, He said, as a city on a hill (see Matthew 5:14–16). Salt was an ancient symbol of friendship and generosity. And like salt, we have a duty to savor person-to-person connections and nurture amity between adversaries. We must not cloister ourselves with others who think like us and congregations that believe like us. Jesus demonstrated how to lift society, moving deliberately to the despised, the diseased, and the misunderstood, listening to and healing them.



I have been inspired by the goodness and selflessness of members of my own church who reach out to those in need. In the course of my service, wherever I have witnessed those afflicted by fire, flood, or any manner of natural disaster or humanitarian crisis, our people have been there. When visiting one such location in California, I was asked if I knew what FEMA stood for. As I struggled with “Federal . . . Emergency . . .,” my friend said, “No, it’s Find Every Mormon Available.” It was said in jest, but more than once the media has reported that the first two groups at the scene were the Mormons and the Latter-day Saints. (This reminds us of the uphill task we have to be known by our full name.) The point is that our people do go out of their way—a very long way out of their way—to help in crises the world over. This isn’t only for disaster response and assisting refugees. These devoted souls are there in those often invisible, private, and chronic situations that can last a lifetime.

And of course it is not just our people. We work alongside representatives of numerous other faiths, often partnering with them in some of the most challenging parts of the world. There are certainly those involved in doing extraordinary work for whom faith is not a driving force. But these contributions with our fellow believers are vast. And, important in today’s context, they are often overlooked. Part of that is our own fault, as we can have something of a tortured relationship with the idea of telling people about these good works. As a church, we are torn between having these efforts be private and letting our light shine in a way that will create awareness that we take our responsibility of contributing to society very seriously. We will probably need to talk more openly about these contributions, letting people know that at the heart of our faith is the desire to help our fellow human beings—wherever they are and regardless of whether they are people of faith or of no faith at all—and we do so without seeking converts in these most trying moments in people’s lives.

We need to help more young people see the opportunities the free exercise of religion provides to serve others in need and unite communities in ways that benefit all people. And we need to help them understand that the expression of religious belief through community service is dependent on religious freedom. With this understanding, they will not only value religious freedom more deeply but will courageously act to strengthen and perpetuate it.

Influencing society always seems to be the job of someone else—someone with more power, more money, or more time. Perhaps we expect some program or sponsor to take the lead. But when it comes to taking care of people, there is no “someone else.” There is only us. Civic engagement requires people to freely act on their beliefs and solve the problems of their communities. If the prevailing philanthropic desires of our rising generation are to be harnessed and maximized, our young people will need to come to the same conclusion as have so many of us here today—that this is the most worthy of causes, a spring that feeds so many others. It represents our highest and holiest beliefs, and at the same time it blesses individuals, families, communities of all descriptions, and entire nations. The task before all of us is how to unite these benevolent desires of the rising generation with the responsibility of preserving religious freedom, along with every other inalienable right. I am so grateful that you have gathered in this way to address just that.

We have a responsibility to help and, as God told the prophet Jeremiah, “seek the welfare of the city where I have sent you into exile, and pray to the Lord on its behalf, for in its welfare you will find your welfare” (Jeremiah 29:7, English Standard Version).


## Conclusion

Every society has a foundation of truths, rules, expectations, and norms that guide their thinking and their actions every day. Many of us take them for granted and, like all things, suppose they will simply always be there for us. Like the air we breathe, we hardly notice them until they are challenged. And then we have to look closely and really get to know them, as if discovering them for the first time. So it is with religious freedom.

The way we all as human beings form our deepest beliefs is perhaps life’s greatest journey of discovery. The freedom in which we do so is precious. Our ability to practice and share those beliefs as we learn of and come to understand the beliefs of others enriches us all,

broadens our view, and creates harmony. A climate in which we are free to believe and practice is also a climate in which we can contribute. Religious freedom demands both the universal right and the universal responsibility. It is our turn to do our part.

As human beings and the children of divine creation, we all want to live by a moral vision and share it with others. In doing this, we enter the realm of both religion and politics. This can be messy and contentious, but we have reason to be optimistic. As Martin Luther King Jr. was so fond of saying, drawing from the abolitionist Theodore Parker, “The arc of the moral universe is long, but it bends toward justice.”<sup>10</sup>

We are in that arc, and God expects us to do our part in nudging it toward justice. This is our work. 

## NOTES

- 1 D. Todd Christofferson, “A Celebration of Religious Freedom,” interfaith address in São Paulo, Brazil, April 29, 2015.
- 2 See “Religious Landscape Study,” 2019, Pew Research Center on Religion and Public Life, [pewforum.org/religious-landscape-study](http://pewforum.org/religious-landscape-study).
- 3 Alexander Hamilton, *The Farmer Refuted*, *Œc*, [February 23,] 1775; emphasis in original.
- 4 David Brooks, “Five Lies Our Culture Tells: The Cultural Roots of Our Political Problems,” *New York Times*, Opinion, April 15, 2019, [nytimes.com/2019/04/15/opinion/cultural-revolution-meritocracy.html](https://www.nytimes.com/2019/04/15/opinion/cultural-revolution-meritocracy.html).
- 5 See Michael Lipka, “Millennials Increasingly Are Driving Growth of ‘Nones,’” Pew Research Center, Fact Tank, May 12, 2015, [pewresearch.org/fact-tank/2015/05/12/millennials-increasingly-are-driving-growth-of-nones](http://pewresearch.org/fact-tank/2015/05/12/millennials-increasingly-are-driving-growth-of-nones); and Becka A. Alper, “Why America’s ‘Nones’ Don’t Identify with a Religion,” Pew Research Center, Fact Tank, August 8, 2018, [pewresearch.org/fact-tank/2018/08/08/why-americas-nones-dont-identify-with-a-religion](http://pewresearch.org/fact-tank/2018/08/08/why-americas-nones-dont-identify-with-a-religion).
- 6 Gordon B. Hinckley, “First Presidency Message: Pursue the Steady Course,” *Ensign*, January 2005.
- 7 Peter Beinart, “Breaking Faith,” *Atlantic*, April 2017, 17.
- 8 E. M. Forster, *Howards End* (1910), chapter 22, paragraph 3.
- 9 John Donne, Meditation XVII, *Devotions upon Emergent Occasions* (1624).
- 10 Martin Luther King Jr., “Out of the Long Night,” *Gospel Messenger* 107, no. 6 (February 8, 1958): 14; paraphrasing Theodore Parker, *Ten Sermons of Religion* (Boston: Crosby, Nichols, and Company, 1853), 84–85.



# *I Am the Woman Who Can*

BY JANE WISE

ASSOCIATE DIRECTOR,  
BYU INTERNATIONAL CENTER FOR  
LAW AND RELIGION STUDIES

*This address was delivered at the  
JRCLS Women in Law Pre-Law  
Conference and Networking Event  
on October 2, 2019, at BYU Law.*

*I* love a birthday party! Yes, I like balloons and cake and presents, but what I really love is commemorating life. Birthdays are important markers—I'm *still alive!* ❁ The years 2019 and 2020 are important markers: they mark 100 years since women were guaranteed the right to vote in the United States. The Nineteenth Amendment was passed in 1919 and ratified in 1920. And every year since that date, it is commemorated and marked whenever a woman casts a vote.

ILLUSTRATION BY ROBERT BARRETT







One of the reasons I am addressing you this evening is that, 43 years ago, when I was admitted to practice law in Utah, my fellow female bar-takers and I were the ones who tipped the numbers from less than 100 female attorneys to 133 female bar members. In 1873 the first woman was admitted to the territorial bar, so it took 103 years to accumulate 100 women—.9708 of a woman per year. Because we were admitted alphabetically, I was exactly the 100th woman to join the Utah State Bar. Today there are 3,500 of us—25 percent of the 13,000 attorneys now in Utah, or an average of 82.3 women admitted a year. At BYU Law, in one of the most recent classes admitted, there are more women than men. Let's hear it for women lawyers!

So how does anyone get from there to here? There are no road maps, because each journey is so unique. This evening I will tell you what that journey looked like for me.

I don't feel like a pioneer. I never made many clear-cut professional goals. If you had asked me in junior high or high school what my career plans were, I would never have said law school! Although I wouldn't have said this out loud, I secretly wanted to be an actress who cooked lovely things. Meanwhile, I was good at school, I loved learning, and I loved reading. And even though my father was an attorney, I had never considered being one.

For women growing up in the late 1950s and early '60s, career choices seemed confined to secretarial work, teaching, nursing, waitressing, or being a waitress in the sky—a stewardess. By the way, I have done many of these jobs.

And yet my father always encouraged me to think outside the box. He had represented dozens of women in divorce proceedings who were left holding the bag—custody of their children, not enough child support to pay the bills, and few marketable skills. Many of them had quit college to work so their husbands could get that degree. These women had bet the farm on a man to be the sole provider, and they had lost.

My father's thinking on this was motivated by how much money I could make, whether single, married, widowed, or divorced. He thought of money as a problem-solver. He would say: "Why not be an accountant instead of a secretary? Why not be a principal instead of a teacher? Why not be a doctor instead of a nurse? Why not be a pilot instead of a stewardess?" These suggestions weren't based on his desire for me to crash through glass ceilings but to attain a much higher earning potential. My father thought I was pretty great, and I knew he would be overjoyed if I became rich. He never changed his ideas about money, believing money insured a degree of safety in life. In fact, years later he failed to convince my son, Elliott, to become an attorney instead of a college professor—which was what my son wanted to do—because attorneys can make a lot more money than college professors. Not admitting defeat, my father speculated: "You know, Elliott, you can marry more money in a minute than you can make in a lifetime."





*Singer-songwriter  
Jewel performs  
on May 13, 2016.*

But my father knew I could never be a pilot because I had his eyes—brown and myopic. In the words of that great Jewel and Dolly Parton song, “My Father’s Daughter,”

*I am my father’s daughter  
I have his eyes  
I am the product of his sacrifice  
I am the accumulation of the dreams of generations  
And their stories live in me like holy water*

I did end up following my father’s advice by becoming a lawyer. I want to share four lessons I have learned firsthand—not just from the law—and some of the stories that live in me like holy water.

#### **RECOGNIZE AND ACT ON GOOD IDEAS**

It was a casual conversation with a friend that led me to law school. I hadn’t seen Merlyn Mays since elementary school, when she wore pink socks and carried a Barbie lunch box. We ran into each other on the University of Utah campus in the spring of our senior year. She looked the same, with pink and lace on her jeans. Quickly we got around to the most pressing subject: “What are you going to do after graduation?” Remember the most popular choices: a teacher, a secretary, a nurse, or a stewardess.

Merlyn said, “I’m going to law school!”

That statement literally stole my breath away.

“You can do that?” I asked.

She told me what that entailed, and in the space of only a few minutes that seed was planted and growing, and it was delicious to me.

The next day I had lunch with my best junior high/high school/college friend, Lisa Cononelos, who was an English major like I was. I told her I was going to law school, after thinking about it for one day.

She looked at me, stunned, and then excited. “I think I’ll go too!” she said. She decided even faster than I had. And now she is a highly successful litigator in Las Vegas and would have made my father proud with the money she has put in the bank.

Lisa and I signed up and then showed up two weeks later for the law school admissions test. Test prep? It wasn’t on my radar. In fact, while standing in line and talking to other test-takers waiting for the doors to open, I found out there was math on the test (and yes, there really was a math section on the test 45 years ago). I hadn’t had math since I was a sophomore in high school. I asked the person next to me what the formula was for finding the circumference of a circle and heard the term *pi*, which only vaguely rang a bell. I had to ask what *pi* was out to three places. Thank fortune for that, because finding the circumference of a circle was on the test.

From this experience of deciding to go to law school, I learned to act on good ideas. At the very least, they are motivation to move forward, and at the very most, they are a catalyst to change everything. But they are not a road map. They are a surprising left turn or stop, but they don’t tell you how the journey will go or what is at the end.

My life was invaded by that good idea—law school—and transformed. I took the test, submitted my application, was accepted to the University of Utah, and started law school just a little while later.

Do you think I even had a road map for the next three years? Guess again! I didn’t really like law school—and that had nothing to do with Ted Bundy being in the class just behind me and sitting next to me in federal taxation. I had been a theater performance and English literature undergraduate. I had majored in subjectivity, expecting crimson pinwheels of creativity to inspire me in my classes. That isn’t law school. Do you know what *stare decisis* means? It means “to stand by that which is decided.” What? That means one is shackled by

precedent, by what went before. I couldn't believe that what I thought would be a better way of doing things didn't matter in the least! What was done was done and would stay done.

I am proud of three innovative, subjective things I did in law school.

❶ I talked the theater department into staging Peter Weiss's *The Investigation* in our moot courtroom. It is a drama about the Nazi war crime trials stemming from the atrocities of Auschwitz. Weiss used the actual testimony of Auschwitz survivors testifying as witnesses against those who had abused them. I was the only law student in the production. We advertised it to the community and sold tickets, and for being a very bleak, intense production, people loved it.

❷ I talked John Flynn, my jurisprudence professor, into letting me do my final project on Studs Terkel's book *Working*, a collection of interviews with Americans on what they do all day and how they feel about their work. I put something together about the importance of knowing clients and their experiences to sell Professor Flynn on it. Then I tape-recorded my paper because it took much, much less time than typing would have taken on my Corona typewriter. Surprisingly, I got an A on the project, demonstrating that it can pay to be creative.

❸ Finally, Lisa and I won the moot court competition by practicing good theater: costuming ourselves, fixing the lighting, and rehearsing and rehearsing until we were so smooth and positively glib.

I was also *that* person in the library looking for distractions. I once sidetracked a fellow student by asking how many animals he could write down in 10 minutes. He asked for an extension to 30 minutes. I had one study table go around and tell about their favorite children's book. I'll never forget hearing Jan Smith, who had been a fourth-grade teacher, tell the story *The Hundred Dresses*, about a Polish girl in Connecticut, in which the other children see her as different and mock her. By the end of the story we had a crowd gathered around the table to listen.

And then there was the competitive nature of law school. We were told at the outset that up to 25 percent of us would drop out after the first year. I remember classmates copying down social security numbers—our grades were posted on a bulletin board and identified by our social security numbers—to try and figure out who had gotten what grade. All our research was done from books, and on two occasions critical cases had been ripped from the casebooks. Lisa and I would spend time in the women's restroom on a couch, smoking candy cigarettes and “blowing off steam.”

By my second year, I was done. I left winter semester for Hollywood—remember, I wanted to be that actress who cooked—and went from audition to audition and finally got one nonspeaking role. I was part of a crowd scene for an International House of Pancakes commercial. After three months of that, I decided to bet on law school, came back, took a summer semester, and graduated with the rest of my class.

But I came back with no idea of what would happen after I finished. Good ideas start you down a path. Perspective comes from connecting the dots after things happen.



Jane as a  
law student  
at the  
University  
of Utah

### *HOLD ON TO GAIN PERSPECTIVE*

You need to wait to see how the story will play out, and as the musicians say, it's not over until the fat lady sings.

I remember taking my son home from the hospital more than 30 years ago. Brand-new babies still default to the fetal position, so putting him in the brand-new car seat meant stretching out his little tucked-in limbs. He looked like a vulnerable little monkey. Right then I wanted to dash for the hills. Who was he? I didn't know how to keep him safe. How was I going to recognize what he needed? How could I help tease out who he really was? Where was my mother?! I knew he would soon find out what a fraud I was, but it wasn't



a problem because he was no expert on what a mother was either.

It worked out. I had three more children: Caitlin, Diana, and Rachel. They've all grown to adulthood—I have the photographs to prove it. I didn't poison or maim them. And I'm glad I stuck around to see how things would turn out.

There were only two occasions when I almost left my home like Nora in Henrik Ibsen's *A Doll's House*. The first was when I saw a live performance of *Romeo and Juliet* at the La Jolla Playhouse, with Amanda Plummer as a riveting and transcendent Juliet. I wanted to stick a flag on that performance. She left me gasping, "Oh, where is my art?!" The second time a *Doll's House* moment came was when I ate for the first time at Alice Waters's restaurant Chez Panisse and had one of the most delicious meals I've ever eaten. Oh, where was my art?! But unlike Dorothy in *The Wizard of Oz*, I didn't have to travel into a fantasyland to discover you could find your heart's desire in your own backyard. I found that what you have is plenty if you only have eyes to see it.

Even when there are photographs, we can't always see what unfolds under our noses, but I have learned to hold on. Perspective will come.

My mother had surgery to repair two bad knees when I was 12. The surgery brought out an autoimmune disease that took her from a walking and driving mother to one tethered to a wheelchair who could do little of what she had done before. She went downhill so rapidly. There were six children in our family. I was the second oldest and the oldest girl, and the youngest were two-year-old twins. Her incapacitation brought me adult responsibility, and I felt put upon.

My father was a bishop at the time, and the ward held a fast for my mother. I thought that after that fast she would stand up and do what she had done before. It didn't happen.

She stayed in the wheelchair. She learned how to do things from the wheelchair, but I still felt burdened, and I was angry. I was angry at God, who wouldn't heal my mother so I could dither about in the care-free way I saw my friends doing. In my book of life, I consigned God to the appendix. I would nod, but I wouldn't speak.

Meanwhile, my mother's prayers were that she would live to see us grow up. Then when my siblings and I grew up, the prayers changed to "let me see my grandchildren." Those changed to prayers asking to see her great-grandchildren. My mother didn't die young at 38. She died old at almost 90. Years later, I was talking to a friend over the vegetables in Dan's grocery store.

The friend pointed out something I had never seen: my mother's precipitous decline in health leveled out after the ward fast. A light turned on.

So act on those good ideas, and hold on for the rest of the story. Perspective will come.

#### BE CURIOUS ABOUT EVERYONE

Now for two crucial skills I brought with me to law school and the practice of law. Curiosity is the key to humanity. I learned this principle 50 years ago at Highland High School. The lesson came from Ursel Allred, the drama teacher.

Mr. Allred directed one big musical each fall that stuffed the auditorium with an appreciative audience, and it was always well done. But there was so much more. In his quiet corridor



Jane (right) in a summer run of *Little Mary Sunshine* at Lagoon Opera House in 1973

Jane with her newborn son, Elliott





*If I had a shoe museum, Jonathan Fairbanks's shoes would be in it.*

next to the auto shop, students rehearsed scenes from dozens and dozens of plays. Oh, the characters I tried on: romantic leads, witches, little girls, little boys, old women, old men, villains, angels, and murderers. I played beauties, sidekicks, and crones.

As we rehearsed, Mr. Allred gave us these directions: *find* the person we were acting and make them real. What a gift to a teenager who didn't yet know who she was but could learn by trying on all those different personae! He told us that the way to find the "realness" in our character was to be *curious*. Who was this person? What had brought them to this point? "Walk in their shoes," he instructed.

I learned to be curious about all kinds of people. I learned there is something valuable in everyone. I learned how to walk in their shoes. That advice also came from *To Kill a Mockingbird*'s Atticus Finch, everyone's favorite lawyer:

*"First of all," [Atticus] said, "if you can learn a simple trick, Scout, you'll get along a lot better with all kinds of folks. You never really understand a person until you consider things from his point of view— . . . until you climb into his skin and walk around in it."*

I prefer Mr. Allred's walk around in their shoes to Atticus's walk around in their skin—which is a little creepy.

Just recently a unique exhibition opened in Denver. It is in the shape of a giant shoebox, and it encourages people to literally walk in someone else's shoes. It is called *A Mile in My Shoes*, by the Empathy Museum. It features 30 pairs of shoes along with audio recordings from the shoes' owners that you can listen to while you try on a pair and go for a walk down the 16th Street Mall.

If I had a shoe museum, Jonathan Fairbanks's shoes would be in it. When my daughter Caitlin was 16, she played Peter Pan in a high school play. The school rented flying equipment from Las Vegas. Caitlin wore a harness under her costume that was attached to thin wires so she could be hoisted up and down by a series of pulleys. The muscle was provided by Jonathan Fairbanks, a giant of a senior who manipulated the wires for her takeoffs and landings. He wore gloves to protect his hands. His feet controlled the descents, and he wore the same shoes every night. Hauling back on the wire, he would step down on the wire in those shoes,



letting it cut through the soles and take off the shoe's edge. My daughter's safety lay in the gloved hands and shoe-clad feet of this 18-year-old boy.

At the conclusion of the run, I said to Jonathan, "When you get rid of those shoes, please let me know. I want them."

"I've ruined them on the wires," he said. "You can have them." He took them off, handed them to me, and walked away in his socks. As I said, he was 18 years old.

Let me tell you how curiosity and walking in someone else's shoes played out for me as an attorney.

In my first few months as a new attorney, I went to the Utah State Prison with one of my male colleagues to interview a potential client. He was in the prison shop when other prisoners threw a flammable liquid on him along with a lighted matchbook. He had skin grafts over most of his body. His hands were permanently clawed because of the damage to his tendons. We were going to talk to him to evaluate the possibility for a civil rights claim.

As we walked down the long hallway to the interrogation room, we passed cell after cell in which prisoners were pressed up to the bars so they could see who was passing. When they saw me, comments were shouted that were racist, sexist, and utterly menacing. I looked at the two guards who were escorting us to see what they were going to do. They only looked at me impassively. My male colleague looked at the floor.

In law school I learned that all lives are of equal worth—it is inscribed on our nation's founding documents: we are created equal and afforded dignity and respect. I hate that this expresses something we aspire to but haven't achieved. Some people get much worse or no support because of their lack of money, connections, darker skin pigment, or additional X chromosome. And what is done? Not enough to make them equal.

I've met the "not equals" in courthouses. Courts are one of the very few places left where you encounter the whole span of society. Walking the halls, you begin to understand that the average American is someone who has a high school education and earns \$30,000 a year. We incarcerate more people than any other developed country: 30 percent of adults carry criminal records and 7 million people are now in jail, on parole, or on probation, and a troubling proportion of them are mentally ill or black.

Insisting that people are equally worthy of respect is still a challenging idea. In the law, you see people who are troublesome in every way: the complainer, the liar, the bigot, the misogynist, and the guy who, as they say, makes "poor life choices." I loved criminal law classes and reading those cases, but after meeting criminal clients as an attorney, I decided I wasn't interested in practicing criminal law because the clients were difficult.

People can be untrustworthy, even scary. When they're an actual threat—as those prisoners seemed to me—you have to protect yourself.

Here is where curiosity became a saving grace. Regarding people as having lives of equal worth means recognizing that we all have a common core of humanity. To see that humanity, you must, as Mr. Allred and Atticus Finch taught, walk in people's shoes with a willingness to ask them what it's like in those shoes. It requires curiosity about the world beyond our experience. We have to care about what it's like in their shoes.

Was I curious? Not in that prison hallway—I felt too threatened. But later I tried to summon enough curiosity to wonder what it had taken to push those men over the edge. I remembered another lesson from Mr. Allred: when people speak, they aren't just expressing their ideas; they're expressing their emotions, and it's the emotions that they really want heard. So I stopped playing back the prisoners' words and tried to imagine their emotions. They felt anger. They felt disrespect. And suddenly I found the core of humanity with the simple application of curiosity.

Curiosity is the beginning of humanity. How has curiosity changed me? I told you that for a time I would nod but not speak to God, thinking He was ignoring me and my family. I put Him in the appendix of my life. Then came perspective, with which I could see His hand. I moved Him out of the appendix. Yet even now, God is pretty much in the margins of my life most days. But when He does take over the whole page, it is because I recognize dignity, humanity, and caring in others.

AS THIS STUDENT HANDED ME THE STATUE, HE SAID,

*“You heard my  
call for help.”*



PHOTO BY BRADLEY SLADE



## ACT CONSISTENTLY WITH COURAGE

Curiosity may give me eyes to see humanity, but it doesn't fix harm. I learned to use tools from law school to diminish harm, but it is easy to become disillusioned. Sometimes the bad guys get away or a really nice person gets fired or baby seals die or a business loses the patent it needs to survive. I learned how to survive with courage. Courage is the resolve to do well, to be consistent, and to make sacrifices when necessary without the reassurance of a happy ending.

We are all fated to live lives shot through with sadness. Courage is the resolve to continue on despite the sadness, without the reassurance of a happy ending or an ending we would have crafted. Mother Teresa is an example of courage to me with her consistent, sacrificial care without the reassurance of happy endings. Her people died. They were off the street, made clean, and given blankets, but they all died.

I have a wood carving that was given to me by a law student who was born in Haiti and raised on the streets of Boston. His education was hit or miss at best, and he didn't have much direction until he met Latter-day Saint missionaries. He hadn't seen God, not even in the appendix of his life, up until then. He came to BYU as an undergraduate. He graduated. He was admitted to BYU Law School, still woefully unprepared as far as language, writing, and analytical skills went. How does a person make up for 12 years of half-hearted or nonexistent schooling? They don't.

Yo-Yo Ma, the great cellist, is often asked by parents, "When should my child start taking lessons so she can play like you?"

"Three," he says. "Three years old. After that, it's too late."

This student barely squeaked by in my writing class, but he was determined, and he came to me for extra help. We worked for two more years and through the summers. On our last tutoring day, he handed me a statue. It is patterned on *Le Marron Inconnu* (*The Unknown Slave*). It represents a runaway slave and commemorates the abolishment of slavery in Haiti. The figure has a broken chain at his left ankle and holds a conch shell to his lips, blasting out a call for help.

As this student handed me the statue, he said, "You heard my call for help."

I wish I could tell you that his skills improved dramatically and that he is now capable of handling any legal problem that comes his way. Not yet. But he continues to work at improving, at catching up, resolved to do the best he can without the reassurance of a happy ending. He has courage.

Atticus Finch had courage, doing his best for Tom Robinson—a black man accused of raping a white woman—while knowing there would be no happy ending. He worked consistently, sacrificially, taking time from his regular practice and family in spite of a predetermined outcome.

It has been a sobering day for me. One of the best parts of my job is teaching academic writing to international scholars at Oxford for a month in the summer. One of our 2018 scholars, Juan Martin Vives, died of a heart attack early this morning, leaving a wife and two young children. He was 39. He was the dean of a small Seventh-day Adventist school in Argentina, where more than three-fourths of the population identify as Catholic. Juan established a law and religion center at his school to foster more openness and conversation. He had a wide range of colleagues and friends throughout Latin America, mostly Catholic, because he saw the core of humanity in all of them.

In a Twitter post, he recently wrote, "We are truly united not when we think and believe exactly the same but when we can live together with our differences and enrich each other out of them." Juan walked in others' shoes. He lived a life of courage as he consistently did his work, despite what the ending might be. God filled the page in his life book.

So here are some ways to let God take over the page in your life:

- 1 Recognize good ideas that will motivate you to change.
- 2 Hold on to gain perspective of what really is happening.
- 3 Be curious about *everyone* to find the core of humanity.
- 4 Act consistently with courage, no matter what the ending may be.

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F L A S H E S

THOUGHTS ON CIRCUMSTANTIAL EVIDENCE

O F L I G H T

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**BY STEVEN J. LUND, '83**

*Executive Chairman of the Board of Nu Skin*

PHOTOGRAPHY BY BRADLEY SLADE





For anyone who has studied law here, this awe-inspiring building holds a lot of memories—and some terrors. I spent my first day of law school in this very room. Kalleen and I had been married for just about one week. Where I now stand stood the formidable Rex E. Lee, dean of the Law School and sitting solicitor general of the United States, who taught our Introduction to the Law class. I remember that by the end of the week, he had reconvinced me that I probably *should* become a lawyer, despite all of my second thoughts. I also remember looking around at my 140 highly accomplished classmates and thinking that everyone seemed pretty certain that they were at least the second- or third-smartest person in the room. By the time first-semester grades came out, it was clear that about 137 of us were mistaken.

I have been mistaken about many things in life. Attending law school was not one of them.

My hope today is to leave you with a testimony of another thing about which I am not mistaken: we are children of God, and He is with us still.

### To Walk by Faith

Faith and belief are complicated things. I serve on the Young Men general board and am especially attuned to youth whose gospel moorings sometimes fray. And it is not only youth but many among us who find ourselves sometimes unsure of the doctrines or of the narrative. We cannot judge each other for what we do and do not know and believe. Testimony comes through gifts of the Spirit, and gifts of the Spirit are, after all, gifts. They do not always come through axiomatic processes (if you do A, you get B). They are highly individualized and measuredly dispensed by a Heavenly Father who knows our hearts and needs and administers to them with divine precision.

Moroni chapter 10 famously *does* contain an axiomatic, condition-bound promise about how to discern the truthfulness of the Book of Mormon. The chapter then goes on to describe a variety of religious experiences, which are given some to one and others to others, but all “according as he will” (Moroni 10:17).

*[T]he gifts of God . . . are many; . . . [a]nd there are different ways that these gifts are administered; . . . and they are given by the manifestations of the Spirit of God unto men, to profit them.*

*. . . [T]o one is given . . . that he may teach the word of wisdom;*

*And to another, that he may teach the word of knowledge by the same Spirit;*

*And to another, exceedingly great faith; and to another, the gifts of healing by the same Spirit;*

*And again, to another, that he may work mighty miracles;*

*And . . . to another, that he may prophesy concerning all things;*

*And . . . to another, the beholding of angels and ministering spirits;*

*And . . . to another, all kinds of tongues; . . .*

*And all these gifts come by the Spirit of Christ; and they come unto every man severally, according as he will. [Moroni 10:8–15, 17]*

Heavenly Father intentionally ordered our world to require us to walk in faith. He put together this sophisticated jigsaw puzzle of mortality and then pulled out a few of the pieces, which He keeps in His pocket to ensure that faith is required when we come up against the gaps. He has ensured that we will not be able to think our way to heaven—to discover Him or to see His handwriting through provable math or science—obviating faith.

A struggling friend recently said of the gospel, “It just doesn’t add up.” His is a fair observation: the puzzle is incomplete, so it does not always add up. This should not surprise us. Even in mathematics there are numbers, like pi, that are irrational—but constant.

We walk by faith, and evidence of the divine will almost always be circumstantial. Still, circumstantial evidence can accumulate, “here a little and there a little” (2 Nephi 28:30), like drops of water fashioning stone into hard and reliable substantiation of that which is.

Since we are at a law school, let’s consider the doctrine of chances, an exception to Federal Rule of Evidence 404 that applies by analogy to our walk of faith. Rule 404 proscribes evidence of prior crimes and other acts. But the doctrine of chances essentially

asks, “What is the likelihood that an inexplicable combination of facts is mere coincidence?”

It first appeared in common law in the 1915 case of *Rex v. Smith*, in which a husband, Mr. Smith (of no apparent relation to Dean Gordon Smith), was accused of drowning his wife in a bath. Smith claimed she had fainted and drowned. Normally, under Rule 404 a prosecutor could not introduce evidence of Smith’s “other acts.” But in *Rex*, the prosecutor asked the judge, *What are the chances* that it was by innocent coincidence that Smith’s two prior wives had also drowned in bathtubs? The evidence was allowed, and Smith was hanged.

When multiple overlapping sets of data form a pattern of evidence that decidedly points toward a certain conclusion, and alternative conclusions are implausible, the veracity of the conclusion must be considered.

### The Composition of Testimony

While serving as an Area Seventy, I was assigned to preside over a stake conference in the Uinta Basin in Utah. We were encouraged to use part of the Saturday evening session for questions and answers. This was daunting because, as we learn in law school, the only thing worse than asking a witness a question you do not know the answer to is being asked a critical question you cannot answer. These Q&A sessions felt like walking unprepared into a law school class. I carried a silent dread that I might add to someone’s confusion.

On this occasion, after a few friendly questions, a large man in blue coveralls stood up in the middle of the chapel and asked challengingly, “Have you seen God?”

There was an uneasy shuffle in the room. His question was inappropriate on so many levels. I thought, “Really, Korihor? Here? And in coveralls?”

My first impulse was to skirt the question and move on, but I was prompted to consider a facet to his question that was on the minds of many members: What does it mean to be an “especial” witness (Doctrine and Covenants 107:25)? A memory suddenly flooded into my mind, and I proceeded to share an experience of which I had never before spoken:



Once on a business trip, I landed in the predawn darkness at an airport in Asia and wearily found my way to a waiting car and driver. The drive to my meeting would take a couple of hours, so I used my overcoat as a cushion and positioned myself in the left corner of the rear seat, planning to sleep for a while. But my attention became riveted on the moonlit landscape of that exotic place, with lovely wooded hills and open expanses.

As the morning sky gradually lightened, I saw evidence of an estuary off to the left and an approaching bridge. As we drove onto the bridge, I was disappointed to find that the view was blocked on both sides by large concrete-slab walls, which apparently had been erected to contain the traffic noises of the heavily traveled expressway. I found myself absently staring at the wall opposite me, wondering what was beyond as I whirled by it at a high speed.

As we left the bridge and the barricade ended, I glanced back at the vista that I had not been able to see and noted that it was just as I had imagined: a large body of water with a forested far edge and a few boats coming and going.

I found myself leaning forward to see farther behind us to confirm that, through the morning fog, a large sailboat was approaching the seaway under the far end of the bridge. Suddenly my jet-lag-muddled brain snapped into a moment of clarity, and I wondered, “How did I know to look for that sailboat?” I could not have known it was there, but somehow I had expected to find it. Somehow I had been looking for it.

In fact, I realized, none of what I saw in the fully revealed vista had surprised me. I seemed to know where to find the wooded outline of the far shore, the barges, and the building on the distant rise. But how?

It dawned on me that the sections of the massive concrete wall on the bridge had small gaps—a fraction of an inch—between them. As we sped across the bridge, my eyes had been fixed upon the blur of gray punctuated by minute flashes of bright light from the morning sun through those narrow slits—slits too small for me to detect anything but bright flickers and flashes. Yet somewhere in my mind, those bursts of light were

compiled into a latent vision of what lay beyond. I knew what was there before I knew that I knew.

Back at stake conference, I finished recounting this experience and noted that the brother was still standing with an arm looped through his front suspenders.

“Does that help?” I asked.

He shrugged absently and sat down.

I was filled with wonder. The Spirit had just answered my own long-standing prayer about my ministry and about my witness.

Clive Staples Lewis described a ride something like mine. At the time, he was a young professor and atheist teaching at Oxford between the world wars. J. R. R. Tolkien was among his best friends and a devout Christian. Over time, as they spoke of religion, the Spirit worked with young Clive. One day Lewis’s brother gave him a ride in the sidecar of his motorcycle to a zoo that was opening in a town some distance away. Lewis later wrote, “I was driven to Whipsnade one sunny morning. When we set out I did not believe that Jesus Christ is the Son of God, and when we reached the zoo I did.”<sup>1</sup>

St. Augustine, perhaps the greatest mind of his age, also spoke of sudden, unexpected inspiration. Steeped in Greek philosophy, he attempted to reconcile his understanding of Christianity with the formal logic of his day. One day he had an experience connecting him with heaven that later caused him to dismiss his life’s work of reasoning as “so much hay.”<sup>2</sup> Of that experience, Augustine said simply:

*[My mind] withdrew its thoughts from experience, abstracting itself from the contradictory throng of fantasies in order to seek for that light in which it was bathed. . . . And thus with the flash of a trembling glance, it arrived at That Which Is.*<sup>3</sup>

I do not know what Augustine saw, but it was miraculous and compelling. The heavens emitted a charged glint of light that converted abstract theology into testimony.

How long does it take for a testimony to ignite? Apparently, somewhere between “the flash of a trembling glance” and the time it takes to drive to Whipsnade.

### A Few Bursts of Light

These experiences of gaining knowledge through flashes of intelligence are similes of my spiritual life—and I believe of yours. My testimony—my “reason of the hope that is in [me]” (1 Peter 3:15)—is a composite panorama of countless bursts of light through an otherwise impenetrable earthly veil. I speak here of such flashes in hopes that they may bring to your mind similar glimpses that have informed your testimony, so that in those questioning moments you might “remember, remember” (Helaman 5:12). While these anecdotes do not amount to proof beyond reasonable doubt, they do combine to remind me of a tangible reality that is not always before my eyes.

### Military Blessings

After my mission to the Netherlands, I was preparing to return to BYU and spent a day with my temple-worker grandparents at the Oakland California Temple, seeking guidance about my future course of study and career. While sitting in a quiet ordinance room, a thought proclaimed to my mind that I should join the military.

That impression could not have evoked a stronger allergic response in my soul. Two years earlier as a freshman at BYU, I had pensively watched the Vietnam War draft-lottery play out on the dorm television and was relieved that my birthday did not pop up until the 346th draw. I would not be drafted. Had I been born a few hours later, my number would have been 10, and I would have been on my way to Vietnam. “Clearly,” I had reasoned, “the Lord doesn’t want me to be a soldier.”

Sitting in the temple, I tried to dismiss the impression as a random thought, but I had been a missionary, and I knew what inspiration felt like. So after building courage for a few months, I found myself in Basic Combat Training at Fort Ord,

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California. I was then stationed for a year in Fort Stewart, Georgia, followed by orders to Frankfurt, Germany. All the while I was bewildered and a little tortured. In Georgia I lived in an unair-conditioned cinderblock billet with 30 other soldiers. My work was unstimulating. I came to love some of my fellow soldiers, but they were living quite different lives from this newly returned missionary.

Church was my refuge, especially in Germany. I longed for Sundays and for young single adult family home evenings. Those gatherings were the bright spots of my weeks in which I could recharge and be reminded of who I was during those lone and dreary Frankfurt winters.

One night I was working in my battalion office, counting down the minutes until 5 p.m., when I would need to race out the door for family home evening. Time was of the essence because our little band of young single adults was carpooling from the church to a downtown apartment across town. Minutes before 5, my boss handed me an urgent and lengthy assignment and told me to hurry. I finished the assignment and then raced to the church, but the group had already gone.

For me, this was a disaster. Some of you will know that the streets of Frankfurt are designed like a spider web that has been in a fire. The streets wander through each other in random disorder, crossing rivers and tram tracks and back again. It seemed as if someone was assigned to go out every night and reverse one-way street signs so that even when you thought you knew where you were going, you could not go that way. A couple of months earlier I had ridden to this same apartment in the back seat of a car, but I had observed nothing. I knew only that it was many miles of tangled streets away.

I drove home as a sad, dejected soldier. I remember folding my arms, intent on grumbling a little, and saying, “Heavenly Father . . .” But before I could continue with, “I am really trying here,” something of a map flashed in my head: a well-lit sequence of streets started at the church and traveled down Eckenheimer Landstraße, through a number of intersections, around a traffic circle, left, right, left, over a bridge, more turns, and onto a broad-bending street in front of an apartment building. I could see in my mind’s eye the very features of the streets.

I was incredulous. There was not a chance I could drive to that place. But I returned to the church and followed the route that had been impressed upon my mind. After driving perhaps 20 minutes, I turned onto a broad street alongside an apartment building that filled the entire length of the long, bending city block. I was astonished to see that I was pulling up to what may have been the right building.

Now I had a new problem. There were about a dozen passageways through the building into small parking areas behind that held stairwells to the four floors of apartments above. “Impossible,” I thought. “I don’t know which of those driveways we drove into, and there are hundreds of apartments.” But it seemed to be a miracle that I had gotten this far, so I slowly drove past several drive-throughs and blindly turned into one.

Standing at the base of a dark, cold, four-story building, I thought, “Even if this is the correct stairwell in the correct building, they could be anywhere on any floor.” I started climbing the stairs, hoping for a hint. You get the idea. Ultimately I stopped on the third floor. This way or that? That way. Was the door on the left or right side of the hall? I walked past eight or ten doors, heart pounding, my feeble faith vaporizing. “I may not even be in the right building. Do I really need to just start knocking on doors?” I stopped to contemplate that question and heard singing: the Spirit of God like a fire was burning.<sup>4</sup>

My friends were oblivious to the I-was-blind-but-now-I-see caliber of miracle I had experienced, but as I stepped through the door, I was the most astonished 23-year-old in the Church. Heavenly Father had sent a shaft of light that replaced my bewilderment with wonder. Later that night I needed to follow someone else’s car to find the church again.

*What were the chances?*

Before enlisting, I had been confused about how it could make sense for me to drop out of school for three long years. I returned to BYU at age 24 after a six-year summer vacation between my freshman and sophomore years, still befuddled about why. Subsequently, many reasons have become clear.



After returning to school, I started dating a girl I had met in Frankfurt, a girl from Tooele, Utah, whose father had taken a government assignment in Germany, a girl so far beyond me in every way that I could never have gotten her attention in Utah if I had not known her in Germany, where she had been a fellow stranger in a strange land. And so it came to pass that against all odds she agreed to marry me.

I have learned that the Lord sometimes withholds blessings from us to eventually deliver undeniably discernible miracles. I would serve 100 army enlistments for that one stunning miracle that formed our family.

While in school, I served in the bishopric of a singles ward and became friends with the ward finance clerk, who had just returned from a mission in France. He finished his finance degree at the same time I finished law school, and he invited me to help him build a company. Thirty-five years later, our company has sold more than \$30 billion in products and today touches





something

of a map flashed in

**my head** millions of people every month in 50 countries. I marvel that, but for that burst of light in the temple, I would have come and gone from BYU and never met Blake Roney, who has enabled many miracles in my life.

The list of blessings flying from that still, small spark of inspiration goes on and on. None of these things are coincidences. They are consequences of a string of heavenly interventions that have burst through the veil.

#### *Relief for a Boy*

Years later, Kalleen's and my nine-year-old son, Tanner, came home from a touch-football game with a pain that turned out to be cancer. He bravely endured three years of aggressive treatment, two bone marrow transplants, and 10 weeks on a ventilator hovering between life and death in a medically induced coma. When he was 12, after about a year of remission, the cancer recurred with a vengeance and went into his bones and head.

#### *A Miracle Diagnosis*

Kalleen and I were called to preside over the Georgia Atlanta Mission. Miracles flashed through our mission with such regularity that we came to think of it as having a front-row seat to the Greatest Show on Earth in which the powers of heaven were wielded by heavenly agents in black name tags as they gathered Israel home. Kalleen called missionary service a "miracle-a-day program."

She had the formal assignment of overseeing healthcare for our missionaries. If one of them got sick, they would call her. It is a challenging role because it is hard to diagnose problems over the phone, even if you have had medical training. Kalleen had received only the on-the-job training of a mom raising a family.

Just a few weeks into our mission, she got a call from a missionary who tended to call a couple of times a week with one issue or another. She was used to hearing him out as he came to the conclusion that he was well enough to go to work. On this particular morning he complained of a stomachache. His stomach had been hurting for a while, so she decided to ask a senior missionary couple that lived near him to go over and take a look, just in case. She later told me, "I opened my mouth to say that and heard myself say words that never passed through my brain: 'Elder, your appendix is about to rupture. Go to the hospital. Go now.'"

In the emergency room they found nothing wrong and concluded that he must have overeaten—which was entirely plausible; he was a missionary. They ordered him home. But our elder told the doctor, "No, Sister Lund told me I have appendicitis."

The doctor, thinking that "Sister Lund" must be a nun somewhere, said, "Then we better run another test." The test was again negative, and they started to send him home again, but he kept insisting that Sister Lund had diagnosed appendicitis.

One night he was so sick that we moved his bed into our bedroom, where we could be with him. He awakened in the middle of the night with severe head pain. We tried to comfort him, but we had no effect.

Suddenly, in the silent, darkened room, he looked at me with an incredulous look on his face and said, "They say I'm supposed to go in the kitchen and sit up on the couch."

"What do you mean? *Who?*"

No response. Then, a little impatiently, "I'm just supposed to go sit up."

He spoke with such unusual certainty that we helped him make his way into the kitchen, where he sat on a couch, pulled a blanket around his shoulders, and slept peacefully the rest of the night.

The next morning we admitted him to Primary Children's Hospital for what would be his last time. I told an oncologist of this exchange in the night. The doctor reasoned that Tanner's head pain was likely caused by pressure blocking a tube that drains cerebrospinal fluid away from the brain. The only way to get the pain to stop is to take the pressure off of this area by sitting the patient up so things can normalize.

This made sense, but who were *they*? And, *what were the chances* that 12-year-old Tanner could know that?

"Is she a doctor?" someone finally asked.  
"I don't know, but she knows a lot of stuff."

They kept him under observation out of deference to Sister Lund, whoever she was. He was still in the emergency center a couple of hours later when his appendix did burst, prompting an immediate appendectomy, which the surgeon told us barely saved his life. "Five minutes later, and we may have lost him."

You might think Kalleen made a lucky guess, but she will tell you that she was only an innocent bystander as the Lord kept His promise to His missionary: "I will go before your face. I will be on your right hand and on your left, . . . and mine angels [shall be] round about you, to bear you up" (Doctrine and Covenants 84:88).



### *Others' Stories of Faith*

As a young missionary in Catholic Belgium, I would occasionally come across memorial shrines commemorating religious experiences. It struck me that if we built such monuments in any stake of The Church of Jesus Christ of Latter-day Saints, there would not be room left for a church building. Some among us are very nearly amphibians, straddling both sides of the veil. Stories of faith surround us.

Last Tuesday an Uber driver told me about being in a combat zone in Vietnam when an "angel" awoke him in the night and ordered him out of his quarters, saving him from certain and immediate annihilation from a mortar round.

Last Friday an old friend, who remains strong in faith while struggling mightily along the covenant path, and his brother told me of the recent passing of their 94-year-old father. He had been in steep decline and in hospice for some time. Just before he died, his head had cleared, and he called his children and grandchildren around him, becoming for a time, they said, like father Lehi, powerfully blessing each of his posterity. These brothers could hardly speak of the majesty of the event. He finished the last blessing, softly laid down his hands, and soon passed through the veil.

This past Sunday I felt the confirming power of someone's testimony that, "in a flash of light, Saul changed to Paul, and Paul changed the world."

### *The Great Train Wreck of Aught 10*

The spiritual experiences of my life and yours come as gifts, but we generally do not think of them as characterizing our lives. More often, life is characterized by events like the one my family calls the Great Train Wreck of Aught 10.

I had splurged and bought my wife a train for her birthday. She had wanted a little home-made lawn tractor-train to pull grandkids around our ranch, but I thought they were too dangerous. So I found a California company that builds little parking-lot trains with electric locomotives that were just big enough for a conductor and that pulled two passenger cars behind.

When the train was delivered, we pushed it out of its transport trailer. I was impressed at how heavy it was with its banks of deep-cell lead-acid batteries in the floorboards. In minutes we had it hitched together. I gave the throttle a bump—and it moved.

"Jump in!" I said to my wife and kids and a couple of friends.

It drove beautifully along our flat street. I wondered if it would be powerful enough to climb the steep hill into the cul-de-sac down the block. We bumped through the drainage dip at the bottom of the hill, and I was delighted at how effortlessly it climbed to the top.

When I made the U-turn and started back down, the electric motors began to shriek as gravity took charge and the train picked up speed. My son Ryan says it went from "zero to dangerous in one second flat." We were instantly careening down the hill, brakes locked, transmission screaming, smoke billowing, engine howling, landscape blurring, and time slowing. There was a complete loss of even an illusion of control. The engine's massive weight was too great for the settings on the brakes, which locked up only some of the wheels, throwing shredded rubber into the air as the train continued to pick up speed.

My wide eyes were on the approaching dip at the bottom of the hill. When we hit it, the change in pitch of the roadway caused the engine to violently tumble, slamming the cars laden with my family onto their sides and flinging them around the engine like a whip across the asphalt into the curb ahead of me.

Well, the emergency room staff was alarmed when they saw patients arriving from a "train wreck," but, somehow, we all limped in with only minor injuries—a fact that *doesn't add up*.

I tell you this story not only because of the clear miracle that we all escaped death in a violent high-speed smashup but also because it describes the context of earth life. Sometimes there is that exhilaration of speed and light and the charging of the



barricades, but there is always an awareness, at least in my psyche, of that dip at the bottom of the hill with its potential for catastrophe. Often that is where angels gather.

The poet Thomas Carlyle complained that “the Universe . . . [is] one huge, dead, immeasurable Steam-engine, rolling on, in its dead indifference, to grind me limb from limb.”<sup>5</sup>

Sometimes life will try our faith.

The book of Joshua provides comfort: “Be strong and of a good courage; be not afraid, neither be thou dismayed: for the Lord thy God is with thee whithersoever thou goest” (Joshua 1:9). My experiences testify that Joshua’s phrase is not mere

**“I opened my mouth . . . and heard myself say words that never passed through my brain: ‘Elder, your appendix is about to rupture. Go to the hospital. Go now.’”**

poetic rhetoric. It is a covenant that is kept in circumstances so improbable as to compel the question *What are the chances?*

#### *Wisdom for a Law Student*

Other flashes through the veil have come when I have been on the Lord’s errand. My journal is full of notes about doctrinal insights that I recorded only *after* I had talked about them in the course of my Church assignments.

A young woman asked me how she could succeed in her first semester of law school and be a Relief Society president too.

I started to say, “Good luck with that,” but, following an impression, I asked, “Who shall we blame? Who called you?”

“Heavenly Father.”

“Why?”

“I suppose because I am just home from a mission and know how to work. Because He knew I would say yes. Because I can accomplish things, even under stress.”

I told her, “All, no doubt, true. But there is another reason”—which was a presumptuous thing for me to say since I did not yet know the reason.

But I said, “He may have called you to save you from law school. They are changing you down there. They are reshaping your mind in very material ways. But, while they are causing you to be able to defend every side of every argument, Relief Society will be reminding you that there are immutable truths.

“Law school teaches you that passion for your profession is critical to success in the world of the law. Relief Society service is teaching you that the world is too much with us and that joy emerges from balance.

“Law school will teach you to love ideas and to respect brilliant shapers of thought and theory. Relief Society will remind you that some ideas are better than others and that the philosophies of men pale alongside the profusion of intelligence dispensed through prophets.”

I looked back at her through misty eyes to see her weeping and nodding. I had gotten something right. Maybe I had simply guessed her needs and responded with words I had never before formed, but you would have to be me to understand why that explanation simply *doesn’t add up*.

#### **The Veil Leaking Light**

Sometimes we can be distracted from the truthfulness of the gospel because we are unsettled by a doctrine that runs afoul of our own sensibilities. As an undergraduate I attended a fire-

side here in this room in which Dr. Robert Patch taught us that every question about every doctrine of the Church can be answered with a simple syllogism: *If* the Book of Mormon is true, *then* Joseph Smith was a prophet. *If* Joseph Smith was truly a prophet, *then* the Church is true. *If* the Church is true, *then* its doctrines are true. All of them.

We must not wrap ourselves around the axle of doctrines that trouble us from time to time. Sometimes our mortal vision is obscured by too much concrete and too little light. Look to the source of those doctrines to determine their truthfulness. If the Book of Mormon is true, then the Church and its doctrines are true. And we learn in this building that truth—even unpopular truth, especially emergent truth, certainly countercultural truth—must be defended. Indeed, it is this impulse that brings many of us to the law in the first place.

To keep us connected to the central truth of mortality, the Lord proffers us a binding covenant almost every week. The sacrament prayers are not poems we recite nor anthems we rehearse. They are ordinances. They are words spoken to Heavenly Father by holders of keys over the very ministering of angels, bearers of the priesthood who implore the heavens that, then and there, the power of the Atonement may cleanse and purify and sanctify lives. Every week miracles happen as 12-year-olds stand in the stead of the Savior and present us with the emblems of the Atonement, inviting us to be cleansed of our pain and sorrow and mistakes and sins.

The soft, penetrating light of healing that warms our souls in sacrament meeting is as profound a miracle as the parting of the Red Sea, as a soldier being guided to sanctuary, as an angel commandeering a telephone to save a missionary, as a holy whisper leading a child from pain, as Saul finding the Savior on the road to Damascus, as an Oxford don finding the Savior on the road to Whipsnade, or as the Divine hurling of the stars and the planets into their ordered rotations. All evidence a pattern of the veil leaking light as the Savior relentlessly pierces it to bless His own.

I bear this testimony, informed as it is—and very probably like yours is—by the accumulated weight of a thousand flashes of light, in the name of Jesus Christ, amen. cm

#### NOTES

- 1 C. S. Lewis, *Surprised by Joy: The Shape of My Early Life* (1955), ch. 15, para. 8.
- 2 Taken from my personal notes in a philosophy class taught by BYU professor Truman G. Madsen in 1979.
- 3 St. Augustine, *Confessions*, book 7, ch. 17; emphasis added.
- 4 See “The Spirit of God,” in *Hymns of The Church of Jesus Christ of Latter-day Saints* (2002), no. 2.
- 5 Thomas Carlyle, *Sartor Resartus: The Life and Opinions of Herr Teufelsdröckh* (1831), ch. 7, para. 8.

BY A. CHRISTINE HURT

ASSOCIATE DEAN FOR ACADEMIC PROJECTS

AND THE GEORGE SUTHERLAND CHAIR

AND PROFESSOR OF LAW, BYU LAW

C A P I T A L

AND

M A R K E T S

*Excerpted  
from  
a forum  
address  
given at  
BYU  
on July 16,  
2019.*

**Good morning!** I cannot tell you what a joy and honor it is for me to talk with you today. When associate academic vice president John Rosenberg called to ask me to speak, he told me that my talk would be a forum but that I was free to make it as “devotional-ly” as I would like. Generally, a forum delivered by a BYU faculty member focuses on that faculty member’s research, and so I will start there and see where we go. In that spirit, I am going to talk about my academic research in the formation and financing of business entities and hopefully try to tie my research into a broader conversation about the importance of strong financial infrastructure and human flourishing.

ILLUSTRATION BY JILL DE HAAN





## THE BUSINESS OF PARTNERSHIP LAW

My area of teaching and research is, broadly, business law. I study the organization and financing of businesses from formation to the initial public offering (IPO).

IPOs get a lot of attention, but interesting things happen in the lifecycle of a startup firm before it gets to IPO. At the other end of the spectrum, one of the most fascinating moments in the lifecycle is the very beginning.

Business firms begin not as firms but as business *ideas*. Though some big ideas come from the mind of one person, many firms begin with two or more persons collaborating on an idea that may have sprung up organically. Or one person might bring the beginning of an idea to another person or group, and then each collaborator will bring different skills and perspectives to grow the idea into a business plan.

Here the law needs to work to nurture, protect, and reward the contributions of the individuals. Depending on the sophistication of the parties, the complexity of the business idea, and other factors, the collaboration may continue for months or perhaps a year or so until a legal entity is formed, such as a limited liability company, limited partnership, or corporation. At that time, the parties will decide which founders will have management roles, and the participants' agreements as to ownership of the entity will be represented by shares in the corporation or ownership interest in the LLC or limited partnership.

But what happens when conflicts arise prior to formal organization and formal documentation of ownership interests? How can law protect and encourage business collaboration? Those of you savvy about social media may recognize two notable examples of this type of conflict that resulted in litigation: Facebook and Snapchat.

Facebook, as you may know, was first the idea of Tyler and Cameron Winklevoss, brothers and students at Harvard who, along with a third founder, Divya Narendra, approached fellow student Mark Zuckerberg with the idea to launch a website called ConnectU. The three founders gave Zuckerberg access not only to computer code but also to the entire business plan. According to the ConnectU founders, Zuckerberg did not work on the website as promised but instead secretly created TheFacebook using the ideas and code shared with him. Zuckerberg then incorporated his business as an LLC with Eduardo Saverin and Dustin Moskovitz, not including the Winklevoss brothers or Narendra.

A slightly more recent example is the origin story of the social media platform Snapchat. Snapchat was created by three college students, this time at Stanford, not Harvard: Reggie Brown, Evan Spiegel, and Bobby Murphy. Reggie Brown came up with the idea of a mobile platform that would allow users to send pictures that then disappeared and shared it with Spiegel and Murphy. The trio spent a summer living together in Spiegel's father's home working on the project, with Brown creating the now-familiar ghost icon and applying for a patent on behalf of the three "coinventors." By August, however, Spiegel had locked Brown out of the platform and formed an LLC with Murphy to own the mobile app.

Do these ousted founders have any recourse? How can the law protect those who contribute their ideas and labor pre-business form?

The answer is one of my favorite legal doctrines: the *de facto* partnership doctrine. The oldest business entity form is the general partnership, which dates back to the Babylonians, classical Greece, Rome, Europe, and then, specifically, the common law of England and the early United States. In a general partnership, two or more persons agree to co-own a business for profit. The persons do not need to make a filing, formally organize, or even have



*Cameron (left) and  
Tyler Winklevoss  
(right) leave the US  
Court of Appeals  
on January 11, 2011,  
in San Francisco,  
California.*



PARTNERSHIP  
LAW IS  
POWERFUL  
AND, I  
BELIEVE, QUITE  
JUST.

a written agreement to create a general partnership. Under state law, a partnership is the default entity when a jointly owned business has not organized as anything else, such as a corporation or LLC. As long as the founders have agreed to work on a for-profit business venture together, they have formed a general partnership, and partnership law will step in to protect the partners.

General partnership law, the oldest of our business entity laws, reflects core values of a society: individuals choosing a small number of others to create a firm and the partners working to further the enterprise, sharing control. Partners have duties to the entity and one other. The entity and the partners are responsible to the outside world for debts of the partnership. The partnership is more valuable than the sum of its partners.

Limited liability entities, like LLCs and corporations, move away from this personal model, and the payoff is that business firms can be larger, can attract more capital from dispersed investors without familial or community ties, and can ensure management that they will be free from frivolous investor litigation. However, until parties form one of these entities, the law will consider them a general partnership.

In a general partnership, partners owe to one another, in the words of Justice Benjamin Cardozo, “the duty of finest loyalty” that surpasses “honesty alone.”<sup>1</sup> This means that partners may not compete with one another, may not use partnership property for their own gain, may not use confidential partnership information, and may not steal partnership business opportunities.

The law is pretty clear: Zuckerberg arguably breached the duty of loyalty to his cofounders, and so did Spiegel and Murphy. The defendants in each of these cases settled fairly early on. The Winklevoss brothers were awarded \$65 million in mediation, which they wisely asked for in a combination of cash and stock, which is now worth more than \$500 million. Reggie Brown received \$158 million to settle his breach of partnership duty case. Partnership law is powerful and, I believe, quite just.

Not all parties to these so-called de facto partnership cases are college students or even unsophisticated parties. Sometimes they can be very sophisticated parties who try to disclaim partnership ties opportunistically after the fact to reap all the rewards from the collaboration.

Though the defendants in these cases like to call the de facto partnership doctrine “partnership by ambush” or “surprise partnerships,” the doctrine is actually pro-entrepreneurship and pro-business. If parties cannot be protected when collaborating, then collaborating and the innovation it produces will be chilled. We want prospective founders sharing ideas, information, and technical specifications, and we want them to share the rewards of doing so.

# HUMAN FLOURISHING DEPENDS

ON THE LAW PROTECTING,

NURTURING, AND ENABLING US TO

RECEIVE VALUE FOR OUR

IDEAS AND OUR LABORS.

## CAPITAL MARKETS AND HUMAN FLOURISHING

Many, if not most, incoming law students would say that they are going to law school to help people, to make the world a better place, and to fight for justice, including me almost 30 years ago. Corporate law, tax law, partnership law—these endeavors don’t inspire and motivate a lot of humanities majors to go to law school. In practice, we used to joke that we were making the world safe for large corporations. But here I am. And not only do I believe that well-run capital markets and robust legal doctrines protect entrepreneurs and encourage human flourishing, I have also had the surprising opportunity to use my corporation-centric experience to see human flourishing on the ground.

As a few of you know, though I am a regular attendee of our local ward of The Church of Jesus Christ of Latter-day Saints, I am officially a member of Community of Christ, formerly known as the Reorganized Church of Jesus Christ of Latter Day Saints. My grandpa was baptized after marrying my grandma and joining a family of RLDS members dating back to the early church in 1832. My husband, BYU Law professor Paul Stancil, is also not a member of The Church of Jesus Christ of Latter-day Saints but is a religious Evangelical Christian. As you might imagine, our long journey together has been a search for a spiritual home for our family, and that journey has taken us to some amazing houses of worship and has allowed us to fellowship with strong believers of many faiths. While professors at the University of Illinois, we worshipped with a Presbyterian church that we still pray for and support from afar.

After attending that church for a year or so, I became aware that a group from the church was starting a partnership with a village in Malawi, a country in which the Presbyterian church traces its influence to David Livingstone, the Scottish physician and missionary. As the group was close to making its first trip to Lisanjala, a rural village there, I suddenly felt that I was supposed to go with them. This was surprising mostly to me, because I am not an intrepid traveler. However, I moved forward in faith and found myself in a village lacking in water, electricity, and roads but abounding in its own faith and hospitality.

I was met by three groups of villagers at the Blantyre airport, including women from the women’s guild of the church—sort of like Relief Society but with a lot more dancing. The partnership was to have three prongs: water, secondary schooling scholarships (there is

*Christine Hurt (right) with  
Happiness Chikopa and  
Patrisia Zidyani after helping  
them register for secondary  
school in Malawi.*



no tuition-free secondary school in Malawi), and microfinance. For several days I traveled around the countryside with bankers from Opportunity International, a microfinance institution. I met owners of small businesses who were able to grow their modest ventures with the help of microfinance.

Slowly during that trip, I realized that I knew a lot about early-stage businesses and finance, and I had tenure. So I devoted the next two years to learning everything about the current environment of international microfinance. I developed and taught a course on microfinance and even took law students to my beloved second home, Lisanjala.

Founders need legal doctrines to protect and nurture their business contributions, and they also need creative capital solutions to finance their ideas and efforts. Microfinance allows microentrepreneurs, alone as sole proprietors or in groups like partnerships, to borrow small amounts of money for small terms to invest in themselves through the purchase of inventory for a mini-shop, a piece of equipment to make wares, or even livestock. I met entrepreneurs who made popsicles to sell when schools let out or who had market stands selling clothing, auto parts, or groceries, and even rice farmers who had created a co-op for both borrowing





and selling purposes. Because mainstream banks aren't well suited to provide financial services to the poorest of the poor, microfinance institutions fill the gap in developing countries with creative substitutes for credit scores and collateral.

I learned many things from my adventure in African microfinance. One is that strong financial institutions and capital markets—along with roads, public education, electricity, shipping, water, healthcare, and a strong legal system—are vitally important to human flourishing. Commentators have mocked a particular politician for arguing that business owners did not build their successful businesses all by themselves. We like to believe that our success is due to our own individual efforts, particularly when those efforts have been extraordinary and have involved huge sacrifices. However, I have seen microentrepreneurs whose sacrifices and expenditures of time and energy rival anyone's, but without reliable ways to ship and order goods, hire an educated workforce, open bank accounts nearby, borrow funds, travel to and from places during the rainy season, and enforce legal rights, they are not allowed to live up to their human potential.

Yes, US business owners have created amazing opportunities, but we have unappreciated luxuries of knowing the lights almost always come on, water is safe and plentiful, the roads are open, and our bank accounts are safe. And we have opportunities to invest our surplus in the best public capital markets in the world.

Yes, I learned that business law is vital to human flourishing, whether that law protects the young person who shares her amazingly profitable idea with acquaintances, the young corporation that wants access to public capital markets, or the small business owner who is trying to access financial products such as savings accounts, credit, and insurance. Strong legal frameworks for business benefit business owners—people. And human flourishing depends on the law protecting, nurturing, and enabling us to receive value for our ideas and our labors.



*While working with African microfinance, Hurt learned that strong financial institutions and capital markets are vital to human flourishing.*

OUR PURPOSE WAS TO SHOW THE LOVE OF  
JESUS CHRIST TO EVERYONE AND . . .  
TO WALK IN THE WILL OF GOD.

WALK IN THE WILL OF GOD

On a more personal note, I also learned a lot about my purpose and Heavenly Father's plans for me during my trips to Lisanjala. And it's not what you would expect. A made-for-TV movie would start with "Christian corporate law professor finds herself in the midst of rural microentrepreneurs" and then draw a straight line to "enormous economic success"! But neither I nor my church group brought about miracles with everything we touched. We had many failed attempts to provide water and secondary education to the villagers there. Our family decided to forego a fancy Christmas one year to finance the building of a well there. It went dry. Our first microfinance trust group ended when the chair absconded with the funds. I was a little disillusioned, to say the least.

One of my favorite books, *Me, Myself, and Bob*, is by Phil Vischer, the creator of VeggieTales. In that book, Vischer talks of how he had a dream to be the Christian Walt Disney and how he failed. Even you fans in the audience might not know that VeggieTales went bankrupt and was sold off, and Vischer lost creative control and the intellectual property rights to his creations. Struggling to come to terms with how he had a righteous dream to glorify God through children's Bible-based animation and how God let his dream die, Vischer had an epiphany. His purpose on earth was not to achieve his dreams, no matter how good or righteous they were. His purpose was to walk in the will of God.<sup>2</sup>

One night in Malawi my law students asked me how I felt about the church partnership when we had had so many failures. Most recently, we had trusted our friend in Malawi to administer our scholarship program by sending him the funds and letting him distribute them to the students. You may be able to predict how that was going to end, but we could not, and so we lost our monies and our friend. Nevertheless, I found myself telling my students, who represented a mixture of faith backgrounds, that our purpose here was not to bring water to Lisanjala or to run a successful scholarship program. Our purpose was to show the love of Jesus Christ to everyone and, in the words of Phil Vischer, to walk in the will of God.

Let me share one more story of how I surprisingly found my background and expertise needed but with mixed success. On my fourth trip to Malawi, I was going to walk two miles north of the Lisanjala church to go to Tuesday market. A young woman named Happiness Chikopa offered to walk with me. She seemed like she wanted to linger there, so I thought maybe she wanted a treat, like a Fanta, before returning to the village. Happiness did not have many treats in her life. However, she turned down the Fanta but asked if we could go to the Mulanje Mission, which is two more miles in a different direction. I thought maybe she wanted to go to the hospital there, but she whispered, "I want to go to school."

To make a long story not quite as long, Happiness wanted to go to high school, but she needed more than just tuition; she needed someone to get her registered in time for the next quarter—in one week. So, as I said, I am not a scientist or an inventor, but I am a mom. You can call me a helicopter mom or a snowplow mom or a lawnmower mom, but if someone needs to get registered for school, I can do it. And I know a bit about educational bureaucracy and other complex institutions.

So we went to Mulanje Mission. That afternoon we were sent to three different places and then told to return the next morning. Happiness met me early the next morning so we could continue our journey, and she brought a friend, Patrisia Zidyani, whom I also knew. Patrisia said to me, "I want to go to school too."

That day we went from office to office where male officials treated the two young women pretty badly and made them feel ashamed of themselves. My law mom training enabled me to advocate for them and finally get them enrolled, get them uniforms, and get their required haircuts. I would like to tell you that all went well, but a year later we didn't know where Happiness was, though Patrisia was still in school.





*In Malawi, Hurt danced with a church women's guild (top), witnessed the process of daily water trips (bottom right), and trekked four miles with her University of Illinois law students to church (bottom left).*



However, I remind myself that my purpose wasn't really to get Happiness enrolled in school. My purpose was to show her how much Heavenly Father loved her—so much that He sent some crazy helicopter mom to her for a few days. Phil Vischer wrote in his book that our five-year plan should not be to be the Christian Walt Disney or to start a successful scholarship program in Malawi or even to be a nationally renowned corporate law scholar. Our plan for five years from now should be to walk in the will of God.<sup>3</sup>

Thank you very much for hearing me out. I have talked about my favorite things: IPOs, the de facto partnership, microfinance, and VeggieTales. I consider every day that I teach at BYU to be a blessing and a priceless opportunity. Today has been the highlight of an amazing life, right up there with dancing with the women's guild in Lisanjala. [cm](#)

#### NOTES

- 1 Benjamin Cardozo, in *Meinhard v. Salmon*, 249 NY 458, 164 NE 545 (1928).
- 2 See Phil Vischer, *Me, Myself, and Bob* (Nashville, Tennessee: Nelson Books, 2006), 248. Vischer wrote: "My ability to accomplish anything good is dependent on my willingness to dwell in the current of God's will. To wait on God and let him supply my form and my direction."
- 3 See Vischer, *Me, Myself, and Bob*, 248.

BY AMBERLY PAGE

**O**n September 5, 2019, Dean D. Gordon Smith welcomed guests to the annual BYU Law Founders Day dinner, which he described as a “signature event for our community,” celebrating “the vision and courage and faith of those who founded the BYU Law School.”

After Dean Smith’s remarks, Tommy Christensen, ’82, president of the BYU Law Alumni Association, presented BYU professor of law Aaron Nielson with the 2019 Alumni Professor of the Year award. Joshua Prince, ’18, spoke of Professor Nielson’s willingness to help students inside and outside of the classroom. Prince said, “I never felt like I was a burden, and I never felt like I was taking time away from things he would rather be doing. That is something that makes Professor Nielson particularly special.” Nielson has continued to support and mentor Prince after graduation. Prince said, “Multiple times over the last several years, I’ve received emails from him, asking how I’m doing, asking how my career is going, and asking

about steps that I’m going to be taking in the future.”

In accepting the award, Professor Nielson shared the story of his clerkship interview with Justice Samuel A. Alito Jr. He said, “I got one legal question, which I got wrong. . . . The entire interview was Justice Alito telling me stories about how important Rex Lee had been to him and how all of the BYU people he had met through Rex Lee over the years had influenced his life. . . . I want to make sure that that legacy continues forward for our students.”

The featured speaker for the event was Judge Amy Coney Barrett, who sits on the United States Court of Appeals for the Seventh Circuit. Judge Barrett earned her JD, summa cum laude, from Notre Dame, where she was a Kiley Fellow and earned the Hoynes Prize, which is Notre Dame Law School’s highest honor. Judge Barrett



also served as executive editor of the *Notre Dame Law Review*. Following graduation she clerked for Judge Laurence H. Silberman of the United States Court of Appeals for the DC Circuit and for Associate Justice Antonin Scalia of the United States Supreme Court. Judge Barrett also worked in private practice

as an associate at Miller, Cassidy, Larroca & Lewin in Washington, DC, and was a professor of law at Notre Dame Law School, where she continues to teach.

Lisa Grow Sun, BYU professor of law, clerked for Associate Justice Anthony M. Kennedy of the United States Supreme Court at the same time that Judge Barrett clerked for Justice Scalia. She introduced Judge Barrett at the event and described her as brilliant, intellectually modest, principled, and kind. Sun went on to say, “She has been a great example to me . . . as a consummate legal scholar, a consummate teacher, and an amazing person of faith.” Professor Sun noted that when Judge Barrett was nominated to the Seventh Circuit Court of Appeals, “every clerk who was in the building the same year” signed a letter in support of Judge Barrett’s confirmation, citing her intellectual rigor,



## The Constitution Is Our Story

### *The BYU Law Founders Day Celebration*





fairness, and open-mindedness. Professor Sun considered that unanimous show of support from individuals with varying political views and affiliations as powerful testimony of Judge Barrett's legal acumen, brilliance, and character.

Judge Barrett's address, entitled "The Constitution Is Our Story," focused on the role of the Constitution in the nation's history, identity, and story. Judge Barrett said that the histories of the United States and the Constitution are necessarily intertwined. Big events, such as the Revolutionary War and the founding of the United States, the Louisiana Purchase, the Civil War, and the civil rights movement, are not just "bold-faced heading[s] in our history textbooks; [they are] also black letter section[s] in our constitutional law casebooks."

Judge Barrett identified several constitutional lessons to be

learned from the events leading up to, during, and after the Civil War, including the successful ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments. She went on to note that we can learn lessons from constitutional "failures" as well. She specifically mentioned the ratification and repeal of the Eighteenth Amendment, regarding prohibition. The story of the Eighteenth Amendment, she said, highlights the tension in constitutional law between national and local rules. "Some things must be utterly non-negotiable as a constitutional matter. Slavery and segregation are obvious candidates. But that's not true of every issue, and the trick in our constitution-building over the last two-plus centuries has been to figure out which issues should have a uniform, national rule and which should be left to local disagreement." With

the issue of prohibition, Judge Barrett said there were too many differences, and the country was not willing to have it "hard-wired in as part of our fundamental, national commitments."

Judge Barrett acknowledged that the central place the Constitution is given in our national story and identity makes disagreement—even intense disagreement—likely, and "when we have such strongly held views on both sides of an issue, it can be tempting to try to resolve every question by using the Constitution." However, Judge Barrett cautioned, "we might not want a national rule for every issue. . . . Federalism . . . permits us to strike a balance between when we have national, nonnegotiable rules and when we can let differences flourish. It promotes experimentation and development."

Judge Barrett encouraged a thoughtful approach to policy questions and more careful consideration of whether a policy rule should be constitutional and, therefore, nonnegotiable or whether it's something that can be left to local determination and disagreement. She concluded by saying: "Our constitutional experiment is still a work in progress, . . . and because it is a work in progress, there will be strong disagreement about what the next chapter should look like. We shouldn't fear that disagreement. It is a feature, not a bug, of our system. And if we understand the ways . . . that differentiate our system from others and how in this large and diverse nation we can all continue to live under one roof, so to speak, we can appreciate how these distinctions inform not only our law but also our politics and our society."



BY **ELIZABETH A. CLARK**  
Associate Director, *BYU*  
International Center for  
Law and Religion Studies

I want to share some thoughts on the cover of the program of the International Law and Religion Symposium, why I picked the photo, and what it means to me. The picture is of a woman in a refugee camp and was taken by Their Story Is Our Story, an organization formed by members of The Church of Jesus Christ of Latter-day Saints who identify with migrants because of our religious tradition's experience with forced migration. They have a book in which they document the stories of those who face persecution, giving a voice to the voiceless.<sup>1</sup>

I love a statement made by one of my own religious leaders that I believe applies with equal

## Seeing Religious Persecution

*Concluding remarks offered at the 26th Annual International Law and Religion Symposium on October 9, 2019, at BYU Law.*

force to those suffering religious persecution. He was speaking of refugees, but you can take a little liberty and translate the word *refugee* into “victim of persecution.” He said:

*Being a refugee may be a defining moment in the lives of those who are refugees, but being a refugee does not define them. Like countless thousands before them, this will be a period—we*

*hope a short period—in their lives. Some of them will go on to be Nobel laureates, public servants, physicians, scientists, musicians, artists, religious leaders, and contributors in other fields. Indeed, many of them were these things before they lost everything. This moment does not define them, but our response will help define us.*<sup>2</sup>

I love that phrase: “our response will help define us.”

I think that sums up what we have tried to address here this year. Our response to the persecution we see throughout the world—how will we let that define us? We have heard so much about the challenges, the courage, and the need for articulate defenders for those facing persecution. I have been particularly moved by so many of you who have clearly been defined by your response to



persecution. And I appreciate the example of courage and humility many of you give to me in being willing to admit failings in your own communities, because certainly this is a challenge for us all.

Academics who study empathy identify concern for others as one of its aspects. Harvard psychiatry professor Dr. Helen Riess defined this empathetic concern as an “inner motivation that moves people to respond and express the urge to care about another person’s welfare”<sup>3</sup> and has noted that this is deeply influenced by our environment. We have more concern for those in need who resemble us. We have more concern for the suffering of one person than for the suffering of many. We feel less concern if we think that others deserve to suffer. We feel less concern if we think we have a higher social status.<sup>4</sup> I think probably those cover all of us; we are all guilty of this.

Two of my heroes are Václav Havel and Aleksandr Solzhenitsyn. Havel wrote of the power of the powerless. He noted how “the world[s] of the powerful and . . . the powerless . . . are never divided by a sharp line: everyone has a small part of himself in both.”<sup>5</sup> Solzhenitsyn similarly wrote, “[T]he line separating good and evil passes not through states, nor between classes, nor between political parties either—but right through every human heart.”<sup>6</sup>

I started these comments by saying I would explain why I picked this picture, but I have not quite gotten there yet, so I am going to conclude by explaining what this photo means to me. When I saw this picture, it immediately spoke to me. You

have heard from my colleague Professor Brett Scharffs about the Punta del Este Declaration,<sup>7</sup> and you have seen the corresponding brochure on human dignity, with those amazingly powerful, moving photos of faces, especially eyes, that reach out and engage you. You see these people and instantly feel a connection to them.

Well, after thinking about the contrast with these captivating photos, I realized why the photo on the program spoke to me. We do not see the woman’s face. She’s depersonalized; she’s abstracted; she’s not valued. She is not seen as a human being. If anything, we see her headscarf and perhaps assume she is Muslim. That is all we know about her. To me, this failure to see a person beyond her religion is a powerful image of persecution, particularly religious persecution.

The award-winning American writer Toni Morrison once spoke about children, and I love this quote from her interview. To me, it speaks to how we can and should respond to everyone, not just children. She said, “When a kid walks in the room—your child or anybody else’s child—does your face light up? That’s what they’re looking for. . . . Let your face speak what’s in your heart. . . . It’s just as small as that.”<sup>8</sup>

By seeing people, by having our faces light up when we see them, we speak what is in our hearts. We see them. We see their challenges. Especially when they are not from our own religious tradition, when they are not from our own class or social status, when they are not from our own culture. When we see them and have our faces light up, we speak what is in our hearts.

Harvard psychologist Dr. Susan David commented about the Zulu greeting *sawubona*, which means “I see you.”<sup>9</sup> Isn’t that a wonderful greeting? I want to see others. To me, this is the essence of human dignity: to see every individual around us and each person’s value.

I have a practice in my family of praying with my children every night, and I often mention in my prayers individual family members, neighbors, or friends who are struggling with one issue or another, or myself when I feel I am particularly struggling. But one night my son asked me, “Mom, why are we just praying for people we know? Aren’t the people we don’t know suffering too?”

We all have difficulties in our lives. For some these are enormous, overwhelming, and life-threatening challenges—

persecution based on freedom of religion or belief or other issues. But the people who matter are not just the people who are my religion, my neighbors, or my friends.

I am an American, I am an Anglo-Saxon, I am a member of The Church of Jesus Christ of Latter-day Saints, and I am a Christian. And I know at times in the past that I have not always seen people who are not Americans or who are not white or who are not members of The Church of Jesus Christ of Latter-day Saints or who are not Christian. And for that I apologize and ask forgiveness. But my hope is that each of us can do better, that I can do better, that we can relate to everyone we meet, and that we can see them and greet them with *sawubona*—I see you.

Thank you.

#### NOTES

- 1 See *Their Story Is Our Story*, comp., *Let Me Tell You My Story: Refugee Stories of Hope, Courage, and Humanity* (Sanger, California: Familius, 2018).
- 2 Patrick Kearon, “Refuge from the Storm,” *Ensign*, May 2016; emphasis in original.
- 3 Helen Riess with Liz Neporent, *The Empathy Effect: Seven Neuroscience-Based Keys for Transforming the Way We Live, Love, Work, and Connect Across Differences* (Boulder, Colorado: Sounds True, 2018), 24.
- 4 See *id.*, 32.
- 5 Václav Havel, *Disturbing the Peace: A Conversation with Karel Hvížďala*, trans. Paul Wilson (New York: Knopf, 1990), 182; originally published in 1986. Also Havel, “An Orientation of the Heart,” in Paul Rogat Loeb, ed., *The Impossible Will Take a Little While: A Citizen’s Guide to Hope in a Time of Fear* (New York: Basic Books, 2004), 83.
- 6 Aleksandr Solzhenitsyn, *The Gulag Archipelago, 1918–1956: An Experiment in Literary Investigation*, trans. Thomas P. Whitney (Paris: Éditions du Seuil, 1974), vol. 2, 615.
- 7 See Punta del Este Declaration on Human Dignity for Everyone Everywhere: Seventy Years After the Universal Declaration of Human Rights, Dec. 2018, [dignityforeveryone.org/punta-del-este-declaration-2](http://dignityforeveryone.org/punta-del-este-declaration-2).
- 8 Toni Morrison, on *The Oprah Winfrey Show*, May 26, 2000; see also “Does Your Face Light Up?” *Oprah’s Lifeclass*, Nov. 2, 2011, [oprah.com/oprahs-lifeclass/does-your-face-light-up-video](http://oprah.com/oprahs-lifeclass/does-your-face-light-up-video). I am indebted to Deborah Farmer Kris’s writing, which introduced me to this quote: see Kris, “‘Does Your Face Light Up’: Five Words That Changed My Teaching and Parenting,” *Lifecompass Blog*, Montrose School, Sept. 10, 2019, [info.montroseschool.org/blog/does-your-face-light-up-five-words-that-changed-my-teaching-and-parenting](http://info.montroseschool.org/blog/does-your-face-light-up-five-words-that-changed-my-teaching-and-parenting).
- 9 Deborah Farmer Kris’s writing also introduced me to Dr. Susan David’s use of the Zulu term *sawubona*: see Kris, “Does Your Face Light Up?”

# From Harper Lee's Book to Idaho's Highest Court

*A BYU Law Alum's Ascent*

BY EZRA VAOIFI

For most people, 10th-grade English class is anything but life changing. But for Gregory Moeller, '90, that is where it all began. His journey to becoming the 58th Idaho Supreme Court justice commenced with Harper Lee's novel *To Kill a Mockingbird*.

"When I was in 10th grade, I saw the movie and read the book," Justice Moeller says. "There is a scene right after the trial is over when Tom Robinson was wrongfully convicted of a crime he didn't commit. The courtroom had cleared, except for the black folks who were still sitting up in the balcony, which was unfortunately the segregated part of the courtroom. Atticus's children were sitting up there with them,

and as Atticus was putting his briefcase away and getting ready to leave the courtroom, all the people began to stand.

"His young daughter was wondering what was going on, likely because she knew that in court, the only time people stand is when the judge or jury enters or leaves the courtroom. She asked the minister standing next to her, 'Why are they standing?' and the minister told her, 'Because your father is passing.'

"When I experienced that as a 10th grader, I felt a chill go up my spine and the hair on the back of my neck stand up, and I knew at that moment that someday I was going to be an attorney. I also somehow knew at that moment that someday I

would be called upon to represent an innocent person in a big case, just as Atticus Finch had."<sup>1</sup>

After graduating from South Fremont High School in 1981, Moeller left Idaho to serve a two-year mission in Nagoya, Japan. He later graduated magna cum laude from BYU with a bachelor's degree in political science, and in 1990 he received his juris doctorate from BYU Law.

After law school, Moeller worked for the Rexburg law firm Rigby, Andrus & Moeller, where he became a partner in 1994. Prior to taking the bench, Moeller tried cases across Idaho. One of his most notable cases included working for 16 years (pro bono for five of those years) to free a

man wrongfully convicted of first-degree murder—a case incredibly similar to the one that had inspired him to become an attorney over a decade earlier.

Justice Moeller is married to Kathy Keck of Ashton, Idaho, and they are the parents of five children and seven grandchildren. He enjoys running, gardening, making family videos, cooking, and eating. He has coached many youth sports teams and has been a member of the BYU Cougar Club since 1990. Justice Moeller is rumored to have the largest hot sauce collection in Idaho (more than 135 bottles and counting).

The following is an excerpt from a Q&A with Justice Moeller.







**Q.** What was your initial reaction when you heard of your appointment to the Idaho Supreme Court? What were you doing?

**A.** Frankly, my initial reaction was relief. It was such a long process—it lasted for almost 18 months. I was actually a candidate for the Supreme Court three times because there were an unprecedented three vacancies in the Idaho Supreme Court in a year and a half. While it's an unfortunate reality of life that you become accustomed to dealing with a lot of uncertainty about your future when you're in your 20s, it's a little more difficult to cope with in your 50s.

I was nominated as one of four finalists for the first two

positions. But when the third position came up, I had serious thoughts about not applying again. You know how you always hear that "the third time's the charm"? Well, there's a competing version of that phrase that goes "three strikes and you're out." With a lot of encouragement from good friends and colleagues, I figured I would test these two hypotheses, and I discovered that, at least for me, the third time was the charm.

I was driving home from Boise when I got the call from the governor's office. After the initial feeling of relief, my next reaction was gratitude for all the people who were instrumental to me along the way. It had been almost 30 years since a sitting

judge from eastern Idaho was appointed to the Idaho Supreme Court, and I was very mindful that I didn't have the ability to change that myself. I spent the rest of the drive home reflecting on all the decisions, cases, mentors, clients, and serendipitous things that had happened in my life over the years that had led to that moment.

**Q.** As an alum of BYU Law, what advice do you have for current students and recent graduates who are seeking to make a difference in their community?

**A.** There are all kinds of ways to make a difference. The easiest way is to get involved in your community and grow wherever you are planted. As a new lawyer, you will be imbued with knowledge that other people don't have—knowledge that they need. You will meet people at parties and community events who will ask you questions about important decisions in their lives. In hindsight, I realize that some of the most important legal advice I ever gave to people I gave informally, without even billing for it. As a young attorney, the most important thing you can do is network and make connections. Join a service club and volunteer for local boards, like the chamber of commerce or a free medical clinic.

I'd like to put in a plug for the advantages of working in a small-town practice. I know that most law school graduates have their sights set on big cities, which is understandable, but one thing I have learned is that you can get a lot more opportunities to make a difference, and can do so more quickly, by working in a small community. Small communities need good,

young attorneys. I handled some very big cases from my six-person firm in Rexburg, and I learned that, contrary to conventional wisdom, you can do big things in small places. Of the five justices on the Idaho Supreme Court right now, all our careers began in relatively small, rural towns in Idaho.

**Q.** As an adjunct professor at BYU-Idaho, you helped educate the next generation about law and politics. In your opinion, what is the best way that teachers, parents, and others can teach true, founding principles of freedom?

**A.** The thing we always hear about law school is that it teaches you how to think, and I believe that is really important in all aspects of education. Sometimes there is too much emphasis on teaching young people *what* to think instead of *how* to think. As a teacher, your goal shouldn't be to imbue someone else with your opinion; it should be to teach them true principles and then help them develop a framework for developing their own views on things. Teaching shouldn't be about conveying one-sided perspectives and ideological propaganda to the next generation. A teacher is a success not only when he or she objectively passes on their wisdom and knowledge but also, more importantly, when he or she passes on the ability to think critically and discern truth from error. Faith can play a vital role in this, which is why there is an important place for universities like BYU.

**Q.** During your swearing-in ceremony, you mentioned the Declaration of Independence and the

Constitution. How have these documents helped shape the values and principles you live by?

**A.** It is important to understand that there is a difference between the Declaration of Independence and the Constitution. The Constitution is the supreme law of the land. Every judge swears an oath to uphold it. The Declaration of Independence, although it contains no binding legal authority, is still a very important document because it contains the aspirations of the founders of our newborn nation. Like the goals contained in the preamble to the Constitution, many have been achieved while many are a work in progress. I remind myself of the content of both documents frequently and have tried to do my best in my roles as an attorney, a judge, and now a justice to defend the Constitution.

**Q.** As a guardian of our Constitution, do you believe that document can last another 230 years?

**A.** Our nation is still one of the youngest nations in the world—certainly one of the youngest among the traditional powers—so I don't see why it couldn't last that long or longer. However, given the exponentially increasing rate of change in the world, both technological and societal, I would be surprised if it lasts that long without some amendments. It has been amended only a few times over the last 230 years, which is a testament to the framers' wisdom and vision. The document itself is intended to survive and to be self-perpetuating. If it doesn't survive, I don't believe it will be because of a shortcoming in the document itself; rather, I think it will be because

Get involved in your  
community and  
grow wherever you  
are planted.

of a shortcoming in the people it was meant to serve and unite. As long as we don't abandon the principles enshrined within it, I don't see why it can't last another 230 years or longer.

**Q.** You said in your swearing-in ceremony, "I have no agenda but justice." Can you elaborate on what it means to have an agenda of justice?

**A.** I was trying to explain my judicial philosophy, which is that it is our job as judges to follow the law, and it is important that we do so. As an attorney, I found that you're often trying to decide *who* is right. As a judge, your primary function is to decide *what* is right. The questions of "Who is right?" and "What is right?" are a little different. I've always found that it is easier for me to determine what is right rather than who is right—and what is right is that we follow the law and apply it to the facts. Now, when the law is not clear on an issue, that is when the most challenging work of an appellate judge begins.

**Q.** In your new role, you will set the precedent for

other cases in the state of Idaho. Some would say that adds pressure to your position. What do you do that helps you execute sound judgment under this kind of pressure?

**A.** As a district judge, I handled many large and small cases, but those small cases were just as important to the people involved as the bigger cases. As an appellate judge, I still see both large and small cases, but the stakes seem to be much higher and the legal questions consistently more difficult. The added pressure I feel now is that the decisions I make have a statewide impact, and that naturally causes a lot more reflection in order to avoid unintended consequences and impractical legal precedents.

**Q.** As you have advanced in your professional career, how have you fostered an environment that is conducive to the Spirit of the Lord and invited others to come to our Savior?

**A.** Keeping balance in our lives and compartmentalizing as necessary is essential to maintaining a proper environment in our homes. Just

as decades of our lives pass through discernible seasons, the hours of our daily lives are constantly moving between our faith, our families, our jobs, and sometimes our hobbies and interests. While these things can often be successfully blended together, at other times they must be kept separate. However, the one thing they must always be is in balance. This cultivates an environment where we can find fulfillment and inspiration as well as opportunities to extend our influence to neighbors and friends.

I think that the biggest thing we can do to affect the world, from the perspective of our faith, is to be mindful of the manner by which we live our lives and raise our families. I've tried to live up to the values I've been taught and pass them on to my family. I have not forgotten (because I am often reminded) that no matter what my current job assignment or church calling is, my most important job is to be a loving husband and a good father. I have now been promoted to grandfather seven times, which is as fun as it is important. I love these assignments more than any other. My professional careers as an attorney and a judge have been fulfilling and have hopefully allowed me to extend my reach by serving my community in a positive way, but in the eternal scheme of things, they are simply what I do when I'm not being Dad or Grandpa.

#### NOTE

- 1 Justice Moeller's insightful account of his special connection with Atticus Finch in *To Kill a Mockingbird* can be found in Gregory W. Moeller, "Defending Innocence: How *To Kill a Mockingbird* Changed My Life," *Clark Memorandum*, Spring 2014, 22–31.