

Fall 1978

J. Reuben Clark Memo: Fall 1978

Brigham Young University School of Law

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J. REUBEN CLARK

MEMO:

BRIGHAM YOUNG UNIVERSITY - SCHOOL OF LAW



VOLUME 1



NUMBER 1

Welcome to the Clark Memo . . .



In this first issue the reader will be acquainted with J. Reuben Clark, Jr., the man for whom the law school here at Brigham Young University was named. He was a remarkable and unique individual. Of him, Philander C. Knox (who served as U.S. Senator, Attorney General, and Secretary of State) once said, "I am but doing him justice in saying that for natural ability . . . I have not met his superior and rarely his equal." A business associate once remarked that "work is his vocation and his avocation, his pursuit and his pastime." He is an inspiration to all who would seek to follow the law. Certainly all law students can benefit from his example, which was to seek excellence and work until you achieve it.

Also featured is the Clark Memorandum, for which this publication was named. It was one of J. Reuben Clark, Jr.'s best known works, described in history books as one of the most important documents ever drafted dealing with American foreign policy.

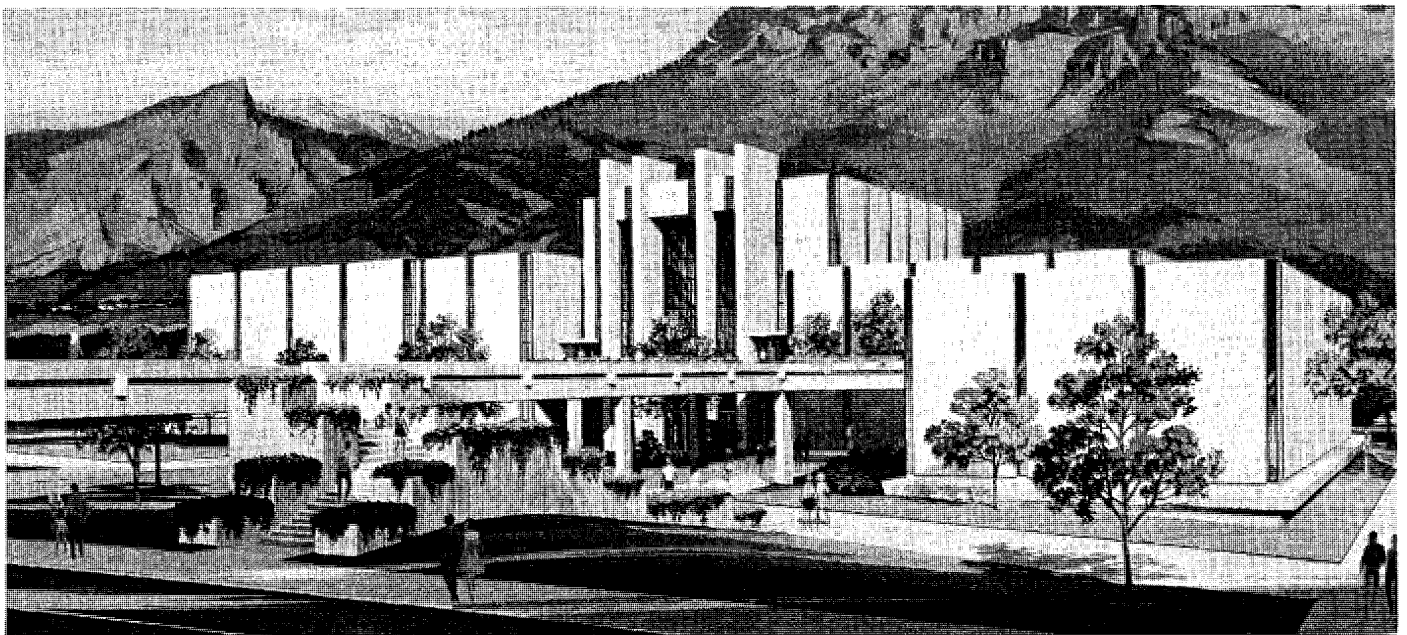
The reader will also be introduced briefly to the history of the law school, including Chief Justice Warren E. Burger's remarks at its dedication on September 5, 1975,

concerning the "Role of Lawyers in Modern Society", containing a charge to the J. Reuben Clark Law School to turn out lawyers who "understand their mission."

Much has been written about the process of gaining a legal education. Included in this issue is an article by Rex E. Lee, Dean of the Law School, focusing on the relationship between faculty and students. We also present an abstract of Roger C. Crampton's article "The Ordinary Religion of the Law School Classroom," followed by a short commentary on the article by Stephen M. Fuller, professor at the Law School.

A special statistical feature on the three classes now attending the school is included, followed by the results of the hotly contested race staged recently in Provo by the Student Bar Association. The competitors? Doctors vs. lawyers. The race course? The streets of Provo. The objective? Catch the ambulance before the other gets to it. At stake? Professional pride. The winners? Turn to inside the back cover.

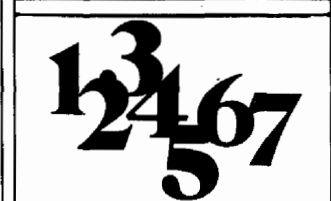
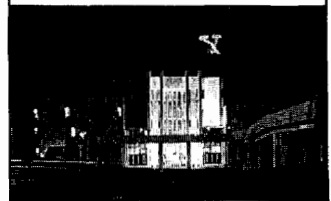
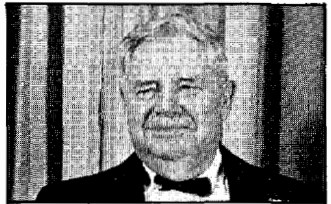
Scott Wolfley
Editor



J. REUBEN CLARK

MEMO:

BRIGHAM YOUNG UNIVERSITY - SCHOOL OF LAW



CLARK MEMO

Volume 1
Number 1

J. Reuben Clark
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Provo, Utah
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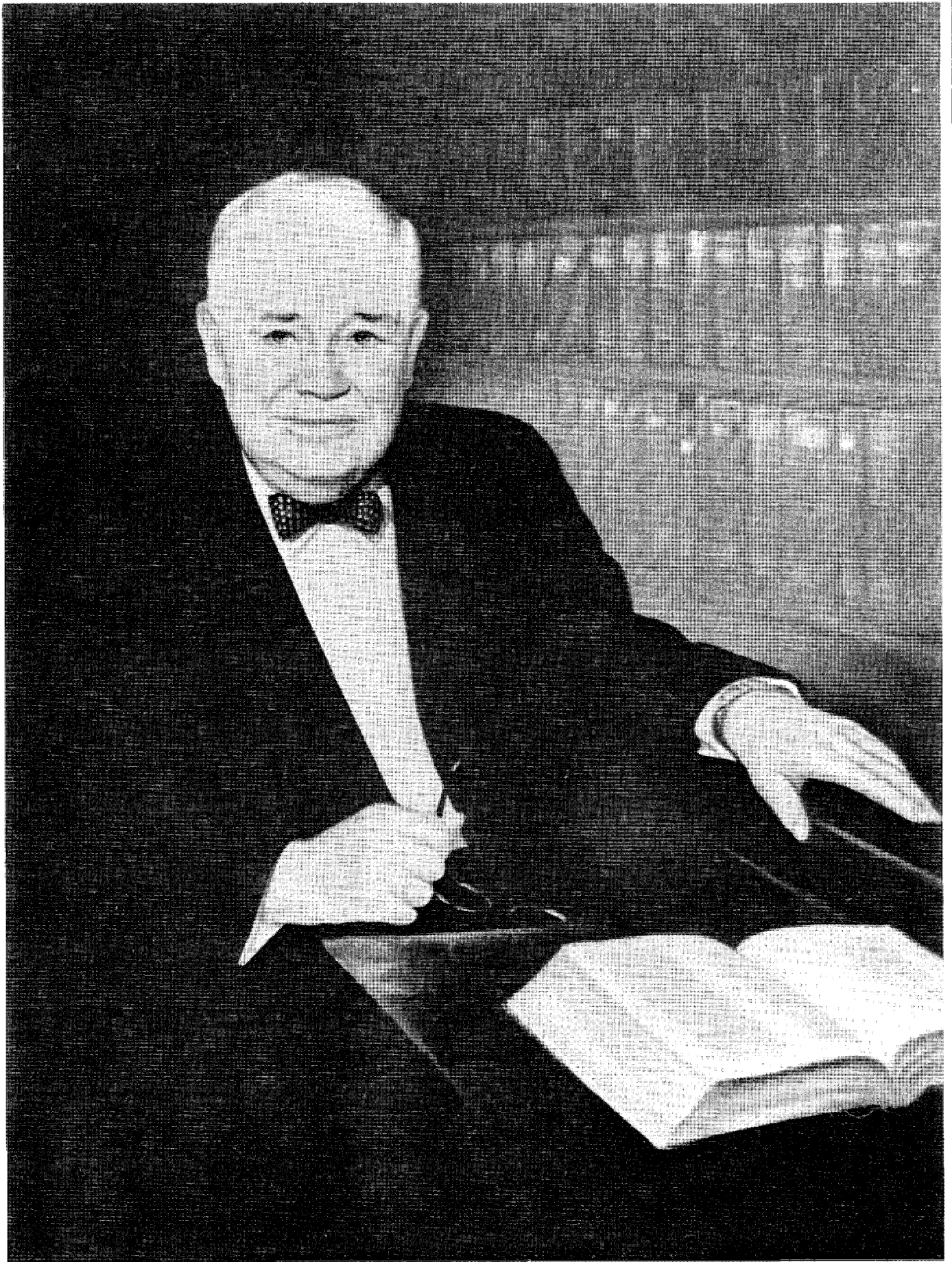
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J. Reuben Clark Jr. Taken from an oil painting done by Roscoe Grover in 1973. Painting courtesy of J. Reuben Clark, III, faculty at Brigham Young University

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I am pro-Constitution, pro-government, as it was established under the Constitution, pro-free institutions, as they have been developed under and through the Constitution, pro-liberty, pro-freedom . . . and pro-everything else that has made us the free country we had grown to be in the first 130 years of our national existence.

In the mad thrusting of ourselves, with a batch of curative nostrums, into the turmoil and tragedy of today's world, we are like a physician called to treat a virulent case of smallpox, and whose treatment consists of getting into bed with his patient. That is not the way to cure smallpox.

J. Reuben Clark, Jr., in his lecture
"Our Dwindling Sovereignty," 1952

J. Reuben Clark, Jr.

Joshua Reuben Clark, Jr., was born on September 1, 1871, in the small farming town of Grantsville, Utah, a Mormon settlement thirty-five miles southwest of Salt Lake City, Utah. His father was a Union soldier in the Civil War who had come West to Salt Lake City. Young Reuben was the eldest of ten children and was raised in a rugged pioneer environment. Although he did not begin his formal education until he was ten years old, he was tutored at home by his mother.

He was anxious to learn, but the highest level of instruction available in Grantsville was the eighth grade. So, when he finished the eighth grade, he returned and repeated it twice more in an effort to learn all he could. At nineteen he left home and went to Salt Lake City, where he spent a year at the Latter-day Saint College. Then, in 1891, in order to sustain himself, and later to support his father, who had been called on a mission for the LDS Church to the Northern States, he discontinued school and went to work in the Deseret Museum as clerk for the curator.

In 1894 he entered the University of Utah. By 1898 he had completed all the requirements for both his high school diploma and his Bachelor of Science degree. He graduated first in his class after serving as studentbody president, managing editor of the student newspaper, secretary to the president of the university, and working at the Deseret Museum.

On September 14, 1898, J. Reuben Clark married Lucine Annetta Savage in

"I am doing him but justice in saying that for natural ability, integrity, loyalty, and industry, I have not in a long professional and public service met his superior and rarely his equal."

Salt Lake City. For the next four years he held various positions around the state as a teacher and administrator at both the high school and college levels. In 1903 the Clarks, including two small children, moved to New York City, where Reuben entered law school at Columbia University. His first year's work was of such high quality that he was elected to the editorial board of the Columbia Law Review. By the end of his second year he was admitted to the New York Bar. During the summer of 1905 he was asked to assist Dr. James Brown Scott, a professor at the Columbia Law School, in compiling and annotating materials for a case book.

Dr. Scott was so impressed with his work that the following summer he asked Reuben to compile and annotate the major portion of two volumes of cases on equity jurisdiction. By this time Dr. Scott had been appointed Solicitor of the State Department. On his recommendation J. Reuben Clark was appointed Assistant Solicitor of the State Department by Elihu Root, Secretary of the State under President Theodore Roosevelt. Shortly thereafter he was also named an assistant professor of law at George Washington University, where he taught until 1908.

In July, 1910, under the administration of President William Howard Taft, Mr. Clark was appointed Solicitor of the State Department. During this period he wrote his "Memorandum on the Right to Protect Citizens in Foreign Countries by Landing Forces," which was later billed as the "classic authority on the subject." While Solicitor he was appointed to the International Relief Board of the American Red Cross and was made chairman of the Committee on Civil Warfare where he drafted procedures to handle insurrection, civil war, and revolution. He was appointed chairman of the American Preparatory Committee to represent the United States at the Third Hague Conference. He was also a member of the Board of Directors of the American Peace Society, and was appointed as counsel for the United States before the Tribunal of Arbitration between the United States and Britain.

"In the universal sweep of his great intellectual vision he has few equals and perhaps no superiors"

He left the State Department in 1913 to open law offices in Washington D.C., specializing in municipal and international law. His clients included the Japanese Embassy, Philander C. Knox, the Cuban Legation, the Guatemalan Ministry, the Equitable Life Assurance Society, and J. P. Morgan & Company. Soon after this his firm expanded and opened offices in New York City and Salt Lake City.

During World War I, Mr. Clark was commissioned as a major in the Judge Advocate General's Officer Reserve Corps. There he assisted in the preparation of the original Selective Service Regulations. He was then assigned to active duty in the Attorney General's Office where he prepared "Emergency Legislation and War Powers of the President." The State Department spoke of it as a fine example of Major Clark's "matchless thoroughness and industry and . . . splendid ability." After the war he was awarded the Distinguished Service Medal for the "exceptionally meritorious and distinguished" services he rendered during the war. In 1928 he was appointed Under Secretary of State by Calvin Coolidge, during which time he published what is perhaps his best known government document, the *Clark Memorandum*, his memorandum on the Monroe Doctrine, which became one of the most important documents ever written on United States foreign relations. It was praised as a "monument of erudition to its author," a "classic commentary on the Monroe Doctrine," and a "masterly treatise."

On October 3, 1930, J. Reuben Clark was named by President Herbert Hoover as Ambassador of the United States of America to Mexico where he served until March 3, 1933. Of Ambassador Clark's work, President Hoover said: "Never have our relations been lifted to such a high point of confidence and cooperation, and there is no more important service in the

whole foreign relations of the United States than this."

In 1933, at age sixty-two, Mr. Clark's lifelong devotion to his church culminated in a new calling. Twenty-six years after graduating from law school, on April 6, he was sustained as second counselor to President Heber J. Grant of the Church of Jesus Christ of Latter-day Saints, and embarked upon a new career in which he was to serve valiantly for twenty-eight years. He later served as counselor to later LDS Presidents George Albert Smith and David O. McKay.

Even with the strenuous demands of his new calling, he found time to continue to serve his country. He accepted several appointments under President Franklin D. Roosevelt, including organizer of the Foreign Bondholders Protective Council, Inc., delegate for the United States in the Seventh

"Even those who violently disagree with his views are intrigued by his eloquence. . . ."

International Conference of American States at Montevideo, Uruguay, and member of the Commission of Experts on the Codification of International Law. Then, in rapid succession he was named Director of the Executive Committee, then Acting President, and then President of the Foreign Bondholders Protective Council, Inc. About that time he prepared a brief for the Foreign Relations Committee of the U.S. Senate on the "Entry of the United States into the World Court," which was labeled as a "scholarly examination" and an "epochal brief."

In addition, during his twenty-eight years in the First Presidency of his church, he was named to the board of directors of many businesses; to government, political and private committees; government commissions; academic journal and educational boards. He also maintained a farm and ranch operation in Grantsville, his boyhood home.

He studied the life and teachings of the Lord Jesus Christ and authored several scholarly religious books. He was an inspirational leader and spoke forcefully and consistently on behalf of freedom, his country, the inspired Constitution, work, integrity, and chastity. He and his beloved wife, who died seventeen years before his passing, were the parents of four children.

After over sixty years of distinguished service to God and his fellowman, J. Reuben Clark, Jr. died October 6, 1961, in Salt Lake City at the age of ninety. It is appropriate to conclude with the observations of four men who worked closely with him and knew him well:

The Honorable Huntington Wilson, Assistant Secretary of State: "I never knew a man whose high character, sound judgement, and splendid ability won for him a more extraordinary position in the absolute confidence of those in charge of the department and of all with whom he was associated."

The Honorable Philander C. Knox, said to be one of America's greatest lawyers, who served as Attorney General, Secretary of State, and United States Senator: "I am doing him but justice in saying that for natural ability, integrity, loyalty, and industry, I have not in a long professional and public service met his superior and rarely his equal."

Albert E. Bowen, intimate friend and business associate: "He spends no time working on schemes of evasion. Having been surrounded with abundant opportunity for graft and acquisition, he has come through without the smell of fire

Having been surrounded with abundant opportunity for graft and acquisition, he has come through without the smell of fire upon his garments. No opprobrium has ever attached to his name.

upon his garments. No opprobrium has ever attached to his name. To him sham and pretense are an abomination."

Harold B. Lee, eleventh president of the church that Mr. Clark served so well:

"In the universal sweep of his great intellectual vision he has few equals and perhaps no superiors . . . Even those who violently disagree with his views are intrigued by his eloquence, his forth-

rightness, pure logic, and penetrating insight into the center and core of whatever subject he undertakes to expound."

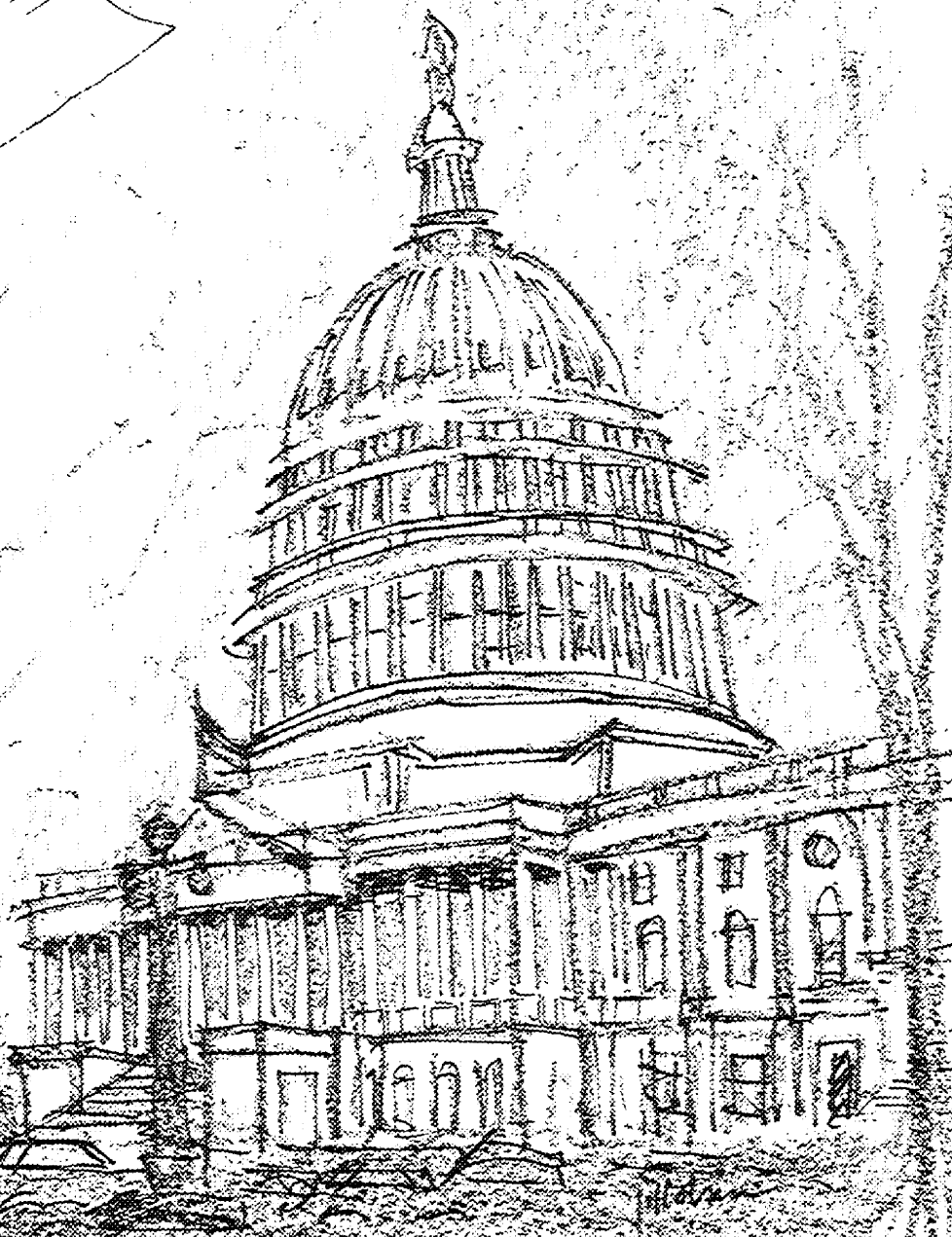
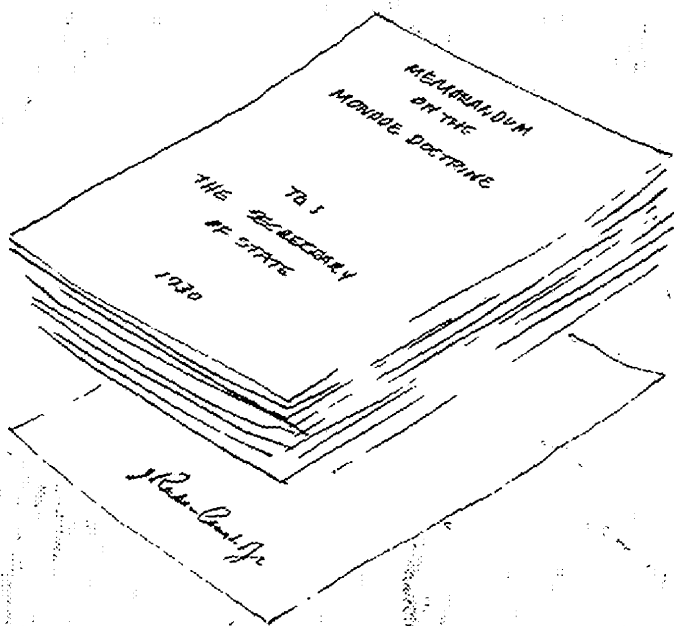


J. Reuben Clark to the Secretary of State:

The Clark Memorandum

The Clark Memorandum is one of the most powerful and influential documents against imperial, colonial, or interventionist policies ever drafted by an American in high office, one of the most important documents dealing with United States foreign relations, and the best known counsel written by J. Reuben Clark, Jr. while he was the Under Secretary of State to President Calvin Coolidge. As such it was influential in the resolution of important international issues in addition to shaping the policy of the State Department regarding the Monroe Doctrine.

It was accepted by both the American public and by foreign governments as an official interpretation of the Monroe Doctrine and has since become one of the landmark documents of American foreign relations.



It denies the existence of any particular right of the United States to intervene in the affairs of Latin American states. In effect, the Roosevelt Corollary to the Monroe Doctrine was repudiated by the Clark Memorandum. It was an answer to a request by then Secretary of State Frank B. Kellogg. Kellogg instructed Clark "to give me everything that had ever been said on the Monroe Doctrine by presidents, secretaries of state and other officials, so that I could have before me a complete compilation of all the expressions about the Monroe Doctrine."

Kellogg intended to use the study as the basis for an official declaration which would correct the misunderstanding among the Latin American Republics that the Monroe Doctrine furnished a justification for intervention by the United States into the internal affairs of those countries. Kellogg was concerned about the future of the peace pact which he had negotiated in Paris, and he wanted support for his position in hearings before the Senate Foreign Relations Committee (December 1928) that the Monroe Doctrine did not contradict in any way the principles of the Kellogg-Briand Pact to renounce war as an instrument of policy. As if to forestall any embarrassing questions during the hearings, Secretary Kellogg had asked Clark to prepare the study.

Clark's Memorandum repudiated the Roosevelt Corollary to the Monroe Doctrine, and stated that the Monroe Doctrine was relevant only to relations between the European and American continents, and did not apply to "purely

The Clark Memorandum was published by the State Department in March 1930. Although Clark stated that it expressed only his personal views, it was accepted both by the American public

and by foreign governments as an official interpretation of the Monroe Doctrine, and has since become one of the landmark documents of American foreign relations.

**Printed here is the standard
extract of the Memorandum found in textbooks:**

The Clark Memorandum On The Monroe Doctrine

To the Secretary of State:

Herewith I transmit a Memorandum on the Monroe Doctrine, prepared by your direction, given a little over two months ago. . . .

It is of first importance to have in mind that Monroe's declaration in its terms, relates to the relationships between European states on the one side, and, on the other side, the American continents, the Western Hemisphere, and the Latin American Governments which on December 2, 1823, had declared and maintained their independence which we had acknowledged. . . .

In the normal case, the Latin American state against which aggression was aimed by a European power, would be the beneficiary of the Doctrine, not its victim. This has been the history of its application. The Doctrine makes the United States a guarantor, in effect, of the independence of Latin American states, though without the obligations of a guarantor to those states, for the United States itself determines by its sovereign will when, where, and concerning what

aggressions it will invoke the Doctrine, and by what measures, if any, it will apply a sanction. In none of these things has any other state any voice whatever.

Furthermore, while the Monroe Doctrine as declared, has no relation in its terms to an aggression by any other state than a European state, yet the principle "self-preservation" which underlies the Doctrine — which principle, as we shall see, is as fully operative without the Doctrine as with it — would apply to any non-American state in whatever quarter of the globe it lay, or even to an American state, if the aggressions of such state against other Latin American states were "dangerous to our peace and safety," or were a "manifestation of an unfriendly disposition towards the United States," or were "endangering our peace and happiness"; that is, if such aggressions challenged our existence. . . .

In this view, the Monroe Doctrine as such might be wiped out and the United States would lose nothing of its broad, international right; it would still possess,

**In effect, the Roosevelt
Corollary to the Monroe
Doctrine was repudiated by
the Clark Memorandum**

inter-American relations." Clark further stated that: (1) the Monroe Doctrine is purely unilateral; (2) it is based on the right of self-defense; (3) all actions of self-defense taken by the United States in regard to Latin America are not by that fact implementations of the Monroe Doctrine, but only such actions as are directed against European countries; and (4) the United States cannot justify actions against American nations under the Monroe Doctrine, however much such actions may be justified on the grounds of self-defense.

in common with every other member of the family of nations, the internationally recognized right of self-preservation, and this right would fully attach to the matters specified by the Doctrine if and whenever they threatened our existence, just as the right would attach in relation to any other act carrying a like menace . . .

It is evident from the foregoing that the Monroe Doctrine is not an equivalent for "self-preservation"; and therefore the Monroe Doctrine need not, indeed should not, be invoked in order to cover situations challenging our self-preservation but not within the terms defined by Monroe's declaration. These other situations may be handled, and more wisely so, as matters affecting the national security and self-preservation of the United States as a great power. . . .

The statement of the Doctrine itself that "with the existing colonies or dependencies of any European power we have not interfered and shall not interfere," has been more than once reiterated.

It has also been announced that the Monroe Doctrine is not a pledge by the United States to other American states requiring the United States to protect such states, at their behest, against real or fancied wrongs inflicted by European powers, nor does it create an obligation running from the United States to any American state to intervene for its protection. . . .

The so-called "Roosevelt Corollary" was to the effect, as generally understood, that in case of financial or other difficulties in weak Latin American countries, the United States should attempt an adjustment thereof lest European Governments should intervene, and intervening should occupy territory — an act which would be contrary to the principles of the Monroe Doctrine. This view seems to have had its inception in some observations of President Buchanan in his message to Congress of December 3, 1860, and was somewhat amplified by Lord Salisbury in his note to Mr. Olney of November 6, 1895, regarding the Venezuelan boundary dispute.

As has already been indicated above, it is not believed that this corollary is justified by the terms of the Monroe Doctrine, however much it may be justified by the application of the doctrine of self-preservation.

These various expressions and statements, as made in connection with the situations which gave rise to them, detract not a little from the scope popularly attached to the Monroe Doctrine, and they relieve that Doctrine of many of the criticisms which have been aimed against it.

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Finally, it should not be overlooked that the United States declined the overtures of Great Britain in 1823 to make a joint declaration regarding the principles covered by the Monroe Doctrine, or to enter into a conventional arrangement regarding them. Instead this Government determined to make the declaration of high national policy on its own responsibility and in its own behalf. The Doctrine is thus purely unilateral. The United States determines when and if the principles of the Doctrine are violated, and when and if violation is threatened. We alone determine what measures if any, shall be taken to vindicate the principles

These various expressions and statements . . . detract not a little from the scope popularly attached to the Monroe Doctrine, and they relieve that Doctrine of many of the criticisms which have been aimed against it.

of the Doctrine, and we of necessity determine when the principles have been vindicated. No other power of the world has any relationship to, or voice in, the implementing of the principles which the Doctrine contains. It is our Doctrine, to be by us invoked and sustained, held in abeyance, or abandoned as our high international policy or vital national interests shall seem to us, and to us alone, to demand.

It may, in conclusion, be repeated: The Doctrine does not concern itself with purely inter-American relations; it has nothing to do with the relationship between the United States and other American nations, except where other American nations shall become involved with European governments in arrangements which threaten the security of the United States, and even in such cases, the Doctrine runs against the European country, not the American nation, and the United States would primarily deal thereunder with the European country and not with the American nation concerned. The Doctrine states a case of the United States vs. Europe, and not of the United States vs. Latin America. Furthermore, the fact should never be lost to view that in applying this Doctrine during the period of one hundred years since it was announced, our Government has over and over again driven it in as a shield between Europe and the Americas to protect Latin America from the political and territorial thrusts of Europe; and this was done at times when the American nations were weak and struggling for the establishment of stable, permanent governments; when the political morality of Europe sanctioned, indeed encouraged, the acquisition of territory by force; and when many of the great powers of Europe looked with eager, covetous eyes to the rich, underdeveloped areas of the American Hemisphere. Nor should another equally vital fact be lost sight of, that the United States has only been able to give this protection against designing European powers because of its known willingness and determination, if and whenever necessary, to expend its treasure and to sacrifice American life to maintain the principles of the Doctrine. So far as Latin America is concerned, the Doctrine is now, and always has been, not an instrument of violence and oppression, but an unbought, freely bestowed, and wholly effective guaranty of their freedom, independence, and territorial integrity against the imperialistic designs of Europe.

J. Reuben Clark, Jr., Memorandum on the Monroe Doctrine, Department of State Publication #37 (Washington, D.C.: Government Printing Office, 1930), p. 238.

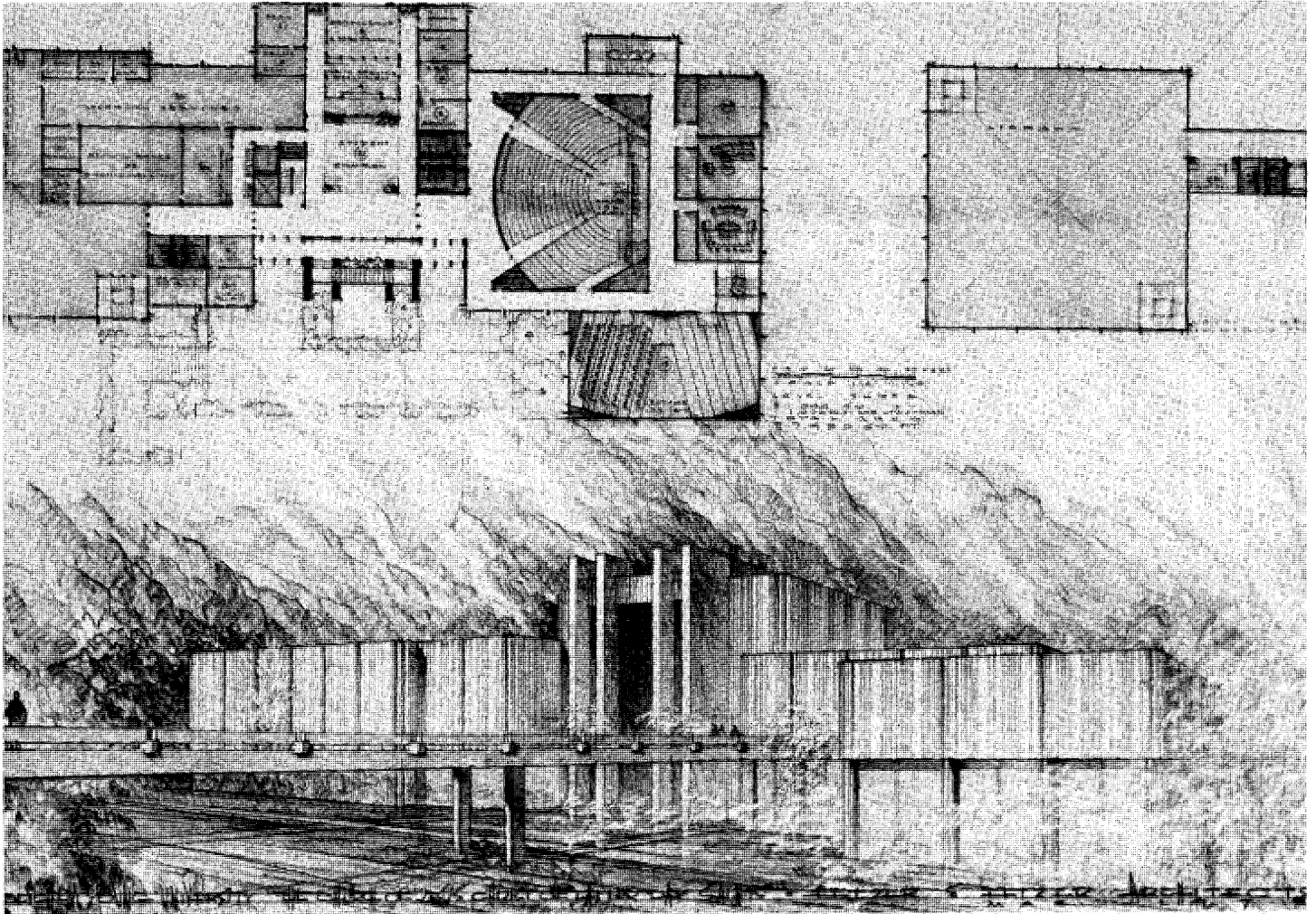
In 1897 J. Whitely, a teacher of civics and public law at the University of Utah, wrote to the President of the Brigham Young Academy, later to become Brigham Young University, expressing his desire to establish a law school in Utah, proposing a law course at Provo as a "branch of the Academy." Two years later a Mr. Saxen of Provo approached the Academy President with another offer to institute a law school, offering to donate his law library. He felt confident he could prepare students for the bar after a two-year course of study. How-

ever, neither suggestion was acted upon.

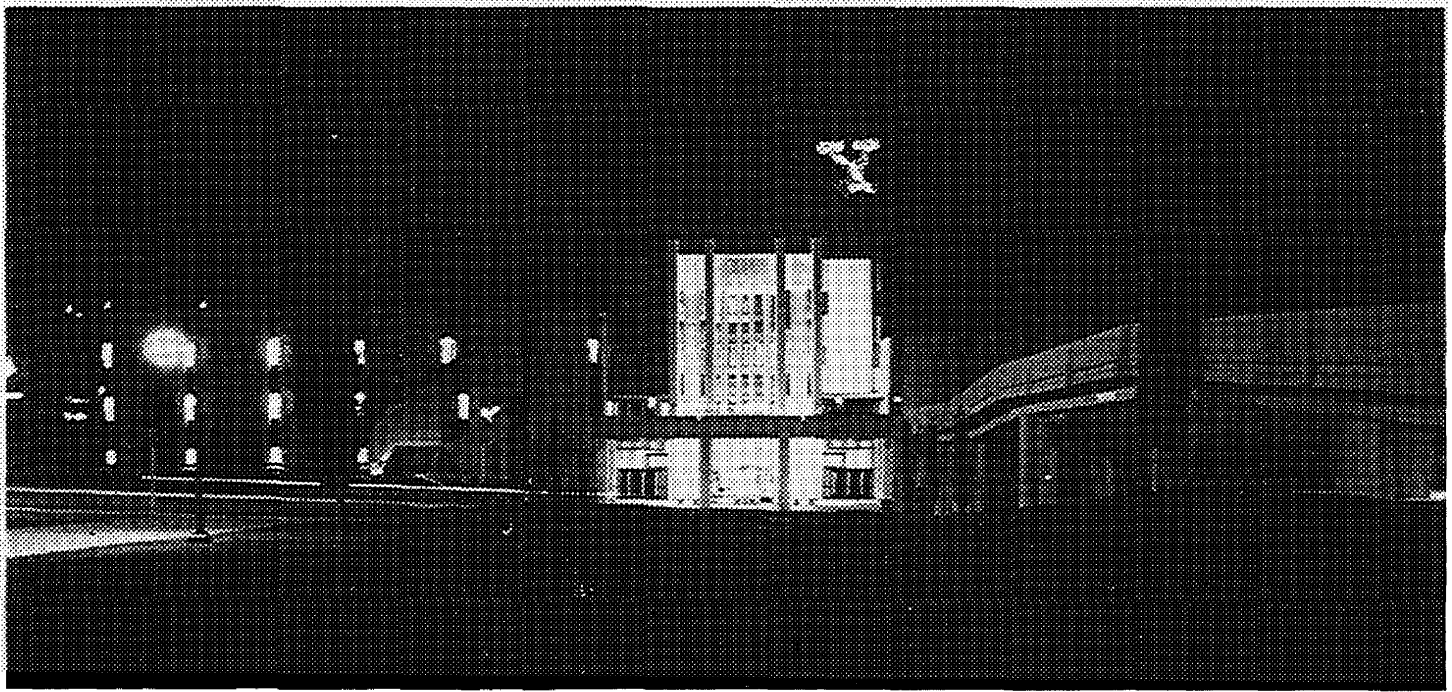
The Academy received a third offer in 1901 from a group of Utah attorneys volunteering to serve on the faculty without pay. But because of financial difficulties Brigham Young Academy could not support a law school at that early date. In the meantime Brigham Young Academy grew from an obscure academy to a prominent American university with a full-time studentbody of over 25,000. Seventy years later, on March 9, 1971, the Board of Trustees determined that a law school should be established at Brigham

Young University.

On November 9, 1971, it was announced that Rex E. Lee, a thirty-six-year-old Arizona lawyer, would be the founding dean of what would be known as the J. Reuben Clark Law School. Dean Lee had taught anti-trust law at the University of Arizona Law School for several years in addition to his full-time practice. He had also established a superior scholastic record at the University of Chicago Law School and had served a one-year clerkship with United States Supreme Court Justice Byron R. White.



J. Reuben Clark



The "Y" on the mountain behind the law school, lighted every year at Homecoming.

Once the dean was selected it was his task to recruit faculty members. Sensing the need for academic experience and believing the faculty to be the key component to the law school's success, Dean Lee focused on recruiting faculty members who were already teaching at prestigious law schools. The turning point came in the winter of 1972 with the appointment to the faculty of three scholars of national reputation: Carl S. Hawkins of the University of Michigan, Edward L. Kimball of the University of Wisconsin, and Dale A. Whitman of the Department of Housing and Urban Development in Washington, D.C.

Of equal significance were the appointments that same winter of two prominent courtroom veterans: Woodruff J. Deem, District Attorney of Ventura County, California, and C. Keith Rooker of Salt Lake City. The early affirmative decisions of these five men to join the new faculty were instrumental in attracting other faculty as well as the charter

class of students, many of whom were qualified for admission to the nation's best-known schools.

In selecting the charter class, the law school received between 400 and 500 applications. After the screening process 157 applicants were accepted. Coming from twenty-five different states, the initial number of students was typical of the class size anticipated for future years.

Named for the internationally known attorney, statesman, and church leader, the J. Reuben Clark Law School was formally opened for instruction on August 27, 1973. Nine faculty members and 157 students began classes in temporary facilities at St. Francis School, formerly a parochial high school. In spite of physical restrictions in these quarters, each student was assigned a private study carrel and had access to the more than 100,000 books already contained in the new law library.

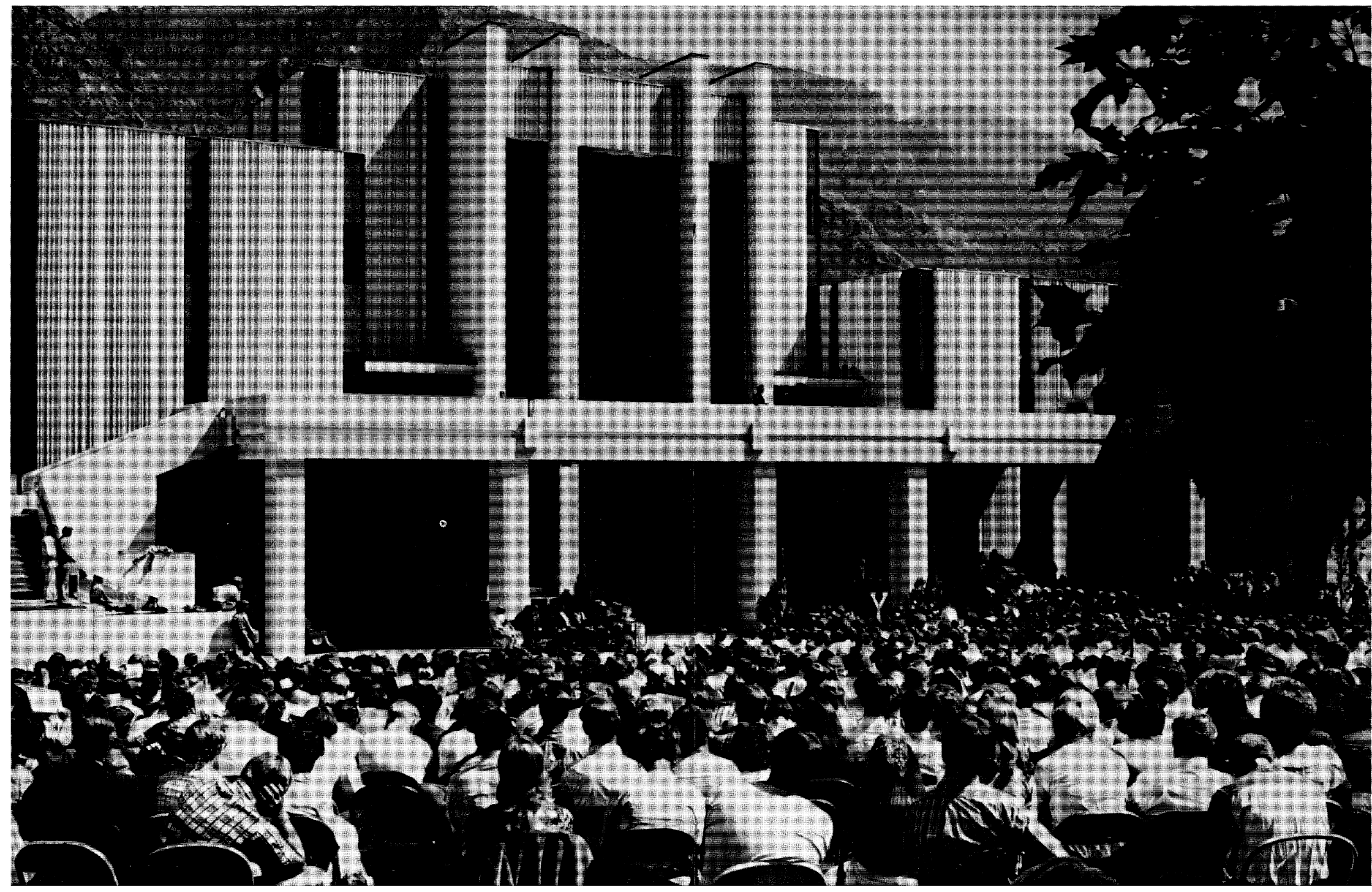
During the late autumn of 1973, offi-

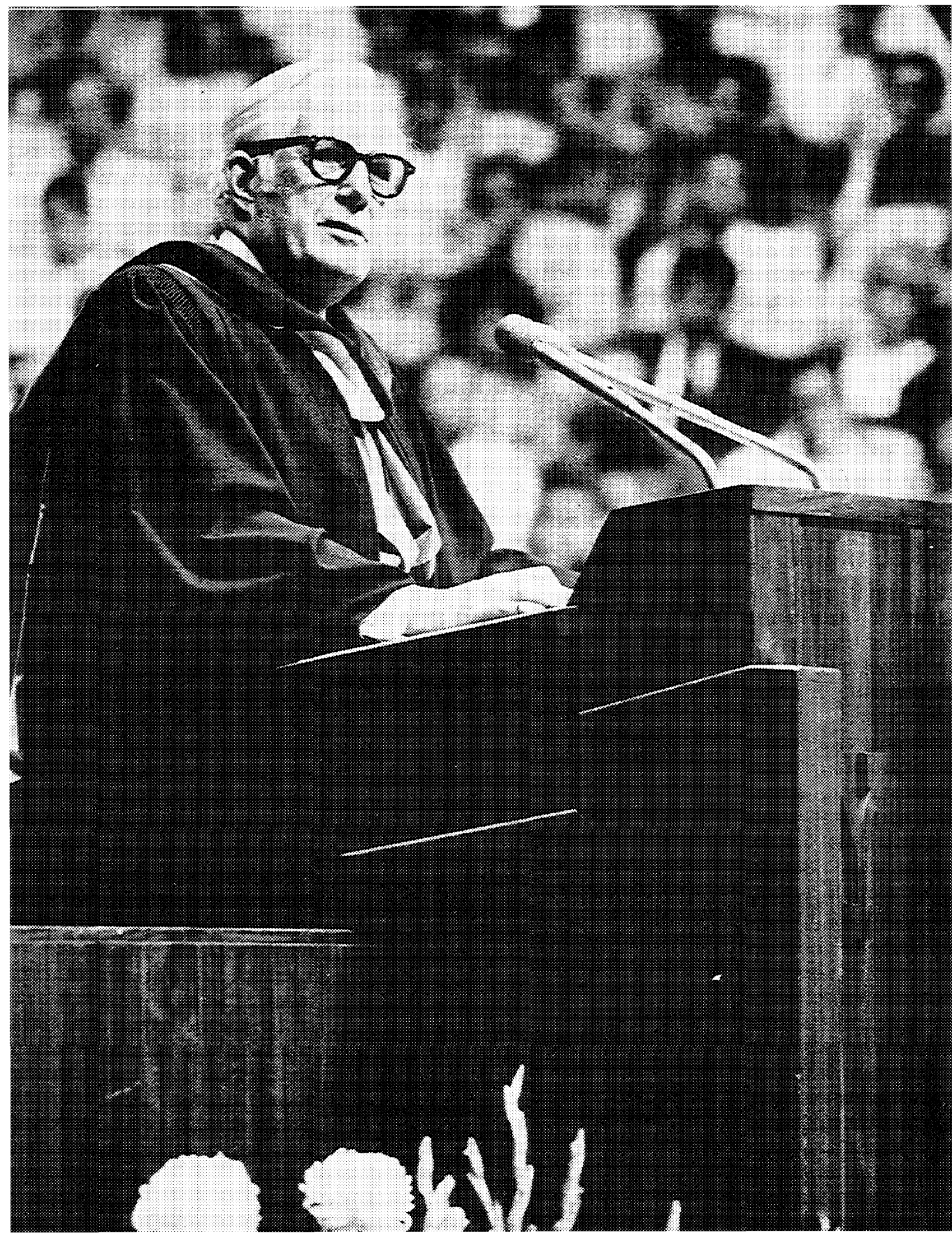
cials of the American Bar Association made the first accreditation visit to the law school. Based on their favorable report, the ABA House of Delegates voted unanimously in February of 1974 to add the J. Reuben Clark Law School to its list of approved American Law Schools.

By the beginning of the second year of instruction there were fifteen teachers on permanent appointment. All had finished law school in the upper five percent of their graduating classes at six well-established law schools. Three had been clerks to Justices of the United States Supreme Court, and all had published scholarly works either as law students or as law professors. In addition, three of the faculty were co-authors of leading law school textbooks.

As an important part of the law school experience, three co-curricular programs were initiated, involving more than 40 percent of the second year students in research, writing and publishing. Students in the Legal Writing Prog-

School of Law



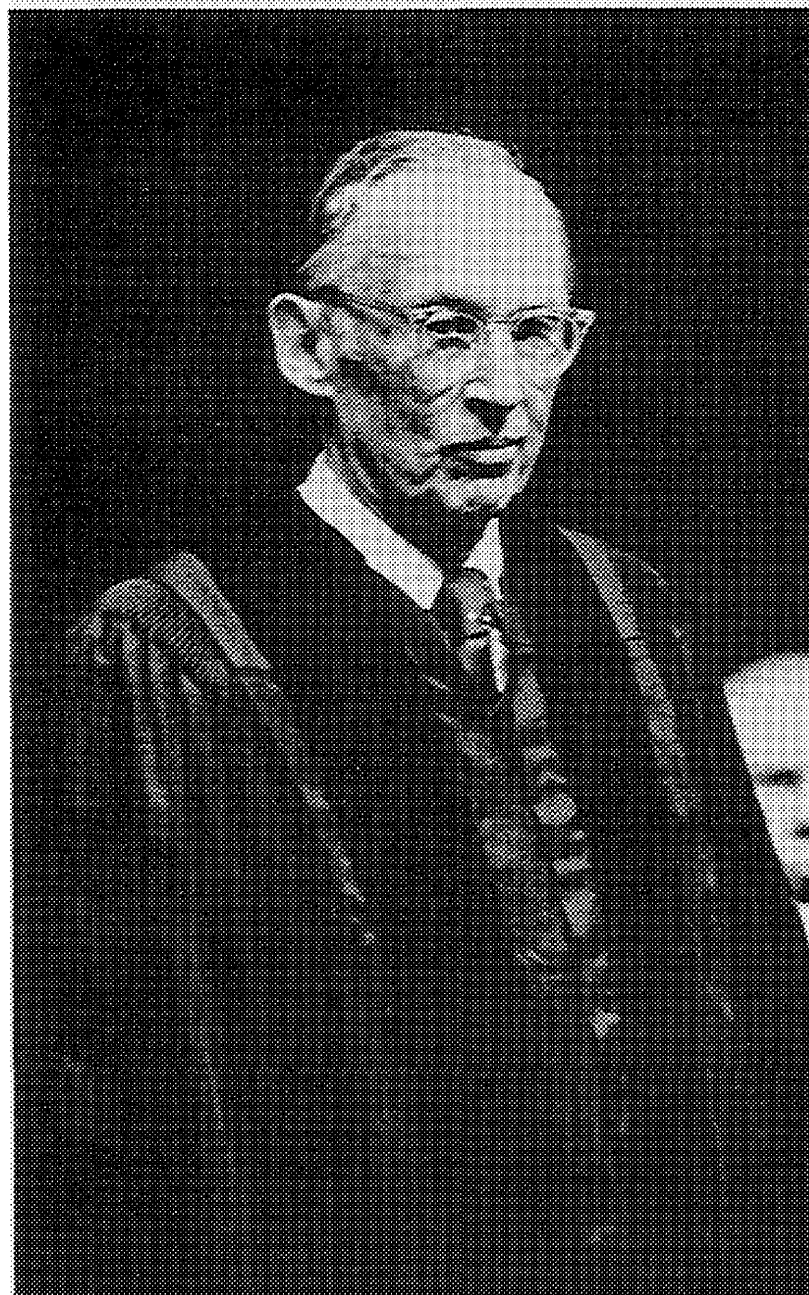


"Here at Provo you have carried on the work of a great University for a century. It is good that you have now added a school of law to carry on the training of lawyers in keeping with the standards that have made this institution one of the great centers of learning in America, privately sustained and conducted in conformity with Christian teaching . . . Guided by these standards, it is safe to predict that this law school will become one of the foremost in the country."

The Honorable Warren E. Burger

"Central to my confidence in the quality of this law school is its relationship to Brigham Young University With these assets, one may predict with confidence that the J. Reuben Clark Law School will not merely be a good one, but that in time it will rank as a great one."

The Honorable Lewis F. Powell



The Role of the Lawyer in Modern Society

Chief Justice of the United States Warren E. Burger

EDITOR'S NOTE: *This essay was originally given as a talk by the Chief Justice on September 5, 1975, for the dedication of the J. Reuben Clark Law Building.*

In the ideal society toward which the human race has been working for 2,000 years, lawyers and judges would hardly be necessary in the sense that they function in our society today. Possibly in that ideal setting we would need even fewer physicians than we have now, for the stresses that tend to make us ill would be far less. In that happy setting the base population would be made up of producers and teachers in the broadest sense of those two terms.

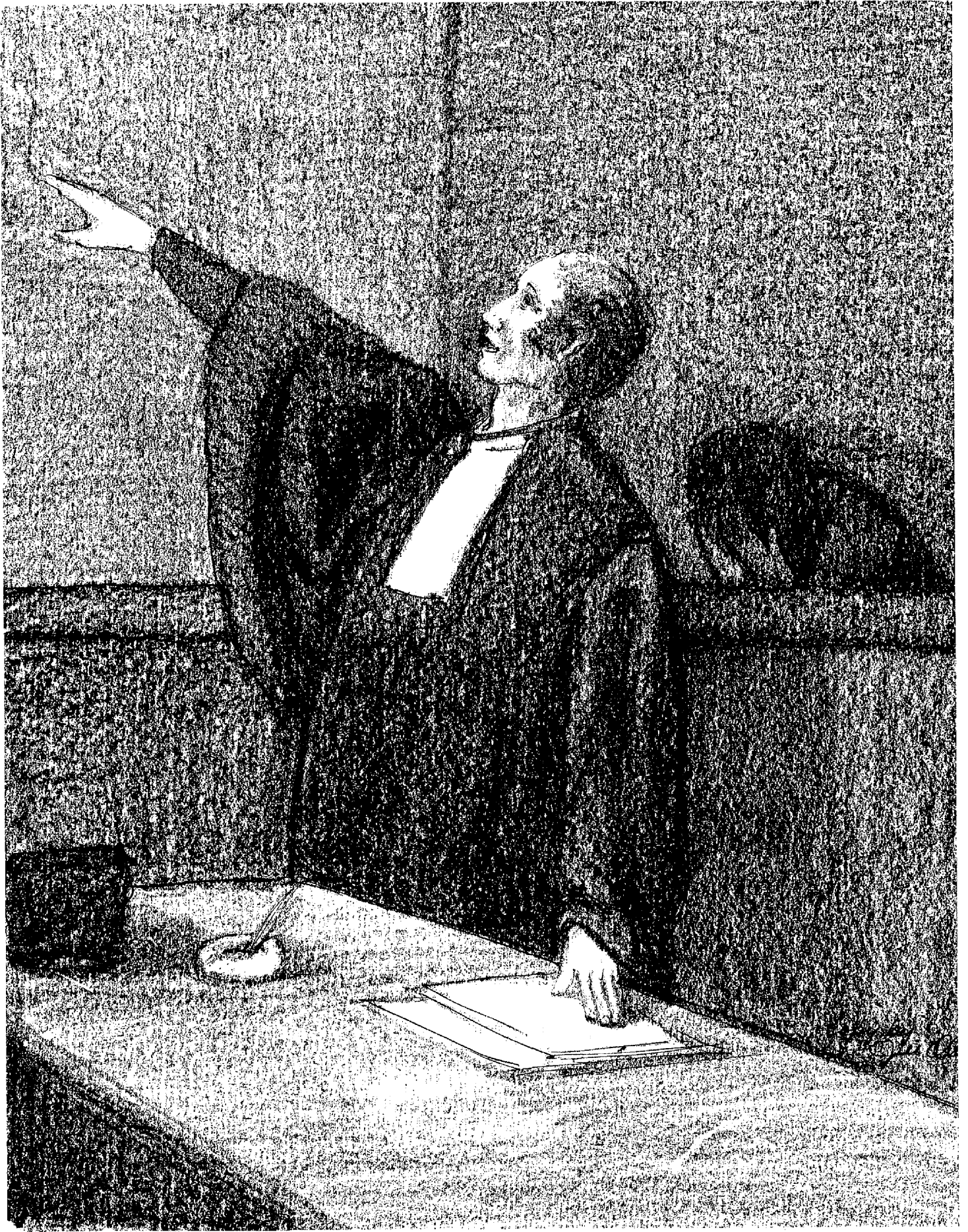
But until that society of the Golden Rule is achieved, lawyers and judges will be necessary components wherever men and women are gathered together in villages, towns, and cities where they must rub shoulders, share boundaries, and

deal with each other daily. Lawyers will be necessary because, in their highest

The literature of the English-speaking world is replete with slurs on lawyers. Typical is the statement that the first step in creating a decent society is "to kill all the lawyers."

role, they are the healers of conflicts and they can provide the lubricants that permit the diverse parts of a social order to function with a minimum of friction. I emphasize that this is the role of the lawyer in the highest conception of our profession, but we know that members of our profession do not universally practice according to these great traditions and with due regard for the moral basis of much of our law. Yet laymen must try to remember that the process of resolving the balance of a lawyer's duty to his client with the public good presents problems of great difficulty at times.

Here at Provo you have carried on the work of a great university for a century. It is good that you have now added



The Role of the Lawyer in Modern Society

a school of law to carry on the training of lawyers in keeping with the standards that have made this institution one of the great centers of learning in America, privately sustained and conducted in conformity with Christian teaching. A school of law with such inspiration and sponsorship fills a significant need in the legal education of this country — a need not met by all law schools today. Guided by

Perhaps the most penetrating inquiry by our best minds will lead us to conclude that, with all its infirmities, our system is indeed sound.

these standards, it is safe to predict that this law school will become one of the foremost in the country.

For centuries lawyers have not been well regarded by the people, and, if we are to believe the polls, that is still true today. The literature of the English-speaking world is replete with slurs on lawyers. Typical is the statement that the first step in creating a decent society is "to kill all the lawyers." But, in fairness to lawyers, we must remember that their most visible activities are in the conflicts that arise between people, particularly those conflicts that are finally resolved in the courts. In the courts, however, the lawyers are not the principals but only the agents of those who are in conflict. It is inevitable that lawyers to some extent become the scapegoat in the play. Obviously, if all people lived by the Golden Rule and adjusted all their personal and business conflicts, there would be no lawyers to castigate.

Although critical analysis of all our institutions and professions has real value, we should also remember, on the affirmative side, the countless examples of courageous lawyers supporting the claims of people who were subject to oppression or abuse of governmental power. Mr. Justice Jackson once commented that in every vindication of the rights of individuals and in every advance of human liberty in our history, the key

figures were lawyers who were willing to risk their professional reputations and their futures in pursuit of an ideal.

A new law school such as this has a rare opportunity available to few others. It can engage in a re-examination of the basic assumptions on which our system of justice functions, always remembering that some are fundamental and immutable and some are open to change. We begin, of course, with the Constitution that implemented the ideals of the Declaration of Independence, and few better foundations could be conceived. In this 200th year of independence we will do well to look again at both of those documents. We see that in the Declaration itself, not less than four times, the authors expressed direct reliance on God as "the Supreme Judge" and "the Creator," and, in the closing sentence, called for the protection of Divine Providence. The uniqueness of this law school is, in part, that its basic charter exemplifies these concepts of the Declaration of 1776.

It is not always popular, even in the presumably rational setting of a law school or university, to challenge or question long accepted parts of our system of law and justice. It is sometimes regarded as heresy to question the validity of the adversary system as it prevails in this country. It is sometimes thought even more heretical to ask whether the full panoply of courts and the contentiousness inherent in the adversary system

The uniqueness of this law school is, in part, that its basic charter exemplifies these concepts of the Declaration of 1776.

are indeed the best methods to resolve the myriad human conflicts that today reach every courthouse in the nation.

If the idea of a university is to be maintained, however, these are examples of the kinds of questions that ought to be asked and examined in the pursuit of perfection. Certain aspects of law and procedure are not immutable truths but simply

tools to get at the truth. Perhaps the most penetrating inquiry by our best minds will lead us to conclude that, with all its infirmities, our system is indeed sound. But if our system of justice cannot stand up under such inquiry, the flaws may call for change. To make such inquiry is to do no more than to apply the techniques of the adversary system to an examination of our legal institutions. Lawyers schooled in and dedicated to the adversary process should not object to using that process in a continuing self-examination of our legal institutions.

The Law School at Brigham Young University has a unique opportunity in at least two respects: It is totally independent and therefore free to emphasize that there is indeed a moral basis for our fundamental law; and it is free to examine and explore whether it is sound educational policy to train people in the skills of a professional monopoly while leaving it to some vague, undetermined, unregulated, undefined future to teach the moral and ethical precepts that ought to guide the exercise of such an important monopoly in a civilized society. . . .

. . . The operation of a law school is itself a high trust and, as with every fiduciary function, it must be treated as a stewardship for which there is an accountability. That accountability is to the public, to the concept of the rule of law, to the highest principles of justice, and in the last analysis, to a conscience responsive to the basic ideals of Western civilization.

As the Law School at Brigham Young University enters its third year, my wish is that the teaching here will always be guided by the need for lawyers who will understand their mission in terms of the great tradition of our profession. That tradition is to serve people's needs, acting as the healers of the inevitable conflicts bound to arise in our complex, competitive, modern society; to participate at all times in the affairs of community and nations; and to execute their trust in keeping with the traditions of Western civilization and with the ideals of the Declaration of 1776 and the Constitution — always guided, as the authors of those great documents were guided, by Divine Providence. This is indeed a large mission for any school or university, but the background of 100 years of Brigham Young University assures that it will be accomplished.

In Law School:

The Student and Teacher Relationship

Rex E. Lee
Dean, J. Reuben Clark School of Law



Dean Rex E. Lee

Lawyers function in a variety of ways in our society. I have enjoyed all four of the lawyering jobs that I have had since I graduated from law school 15 years ago, but the one I have liked best is my present one. For me, the most attractive single feature of law teaching is my relationship with two groups of colleagues: faculty members and students.

Other lawyering settings offer at least a rough parallel to the colleague relationships among faculty members. Whether in government service, private practice, or working as a law clerk or corporate house counsel, the relationships that a lawyer has with his fellow lawyers must rank high in the list of values that make his professional experience attractive or unattractive.

... the most attractive single feature of law teaching is my relationship with two groups of colleagues: faculty members and students.

By contrast, there is no other lawyer employment that offers a counterpart to the relationship between teacher and student. I have now had about four years experience as a full time law teacher, and with each year I come to appreciate more the importance of the student-teacher relationship as it bears on the attractiveness of law teaching as a profession.

Two aspects of the ties between law students and law teachers that are particularly intriguing are (1) the evolution of that relationship from what is essentially a tutor-pupil arrangement to one in which each regards the other as a professional colleague and (2) the enduring nature, manifest through different human beings in different generations, of the bond between teacher and student.

The Student-Teacher Relationship

Tutor-pupil or professional colleague

The song "I Am A Child of God" contains a subtle reminder that while varying degrees of obedience and submission are required at different stages of the parent-child relationship, each is a child of the same Heavenly Father. For that reason the two persons are not only parent and child, but also brothers and sisters. Over the short run the child needs guidance and instruction, but over the long run he is the parent's peer, and in some respects will be superior to the parents.

There are horizontal as well as vertical relationships between the person who teaches law and the person who studies it. As in the case of parent and child, there is no need for

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vertical aspects of the relationship. These are not, however, the aspects of law teaching that make it attractive, and one of the challenges of the law teacher is to convert his own image as a tutor into that of a professional colleague.

This conversion process is necessarily a gradual one. For some it is largely accomplished during the law school years. For some it must await the student's entry into the practicing profession. For some, perhaps most, I am not sure that it is ever completely accomplished.

During my service as a government lawyer, I appeared before a Senate Subcommittee to testify concerning a bill that would have enhanced the powers of Congress at the expense of the Executive Branch. My questioner at that hearing — really my opponent — was my former law professor, Philip Kurland. This experience occurred 13½ years after I had graduated from law school. I was an Assistant Attorney General of the United States. I had behind me the weight of the Department of Justice on whose behalf I appeared. The position I was taking had the personal approval of the Attorney General (who, ironically, was my law school dean at the time Professor Kurland was my teacher). Most important of all, I was convinced of the correctness of my position, even though Mr. Kurland had not seen the light. All of these things notwithstanding, for the first minute or so of our interchange, I was burdened with the tutor-pupil image. He was the teacher, and I was the student. He had the answers, and my job was to see if I could come up with the answer that he knew and I didn't.

For me, the point that comes out of all of this is rather simple. It rests on two premises. First, the extent and the velocity of the change will vary from teacher to teacher and student to student, but there is an inevitable relationship change over time from the vertical to the horizontal, from the tutor-pupil to the professional colleague.

Second, subject only to a few minor qualifications — and they are minor and they are few — the horizontal relationships are much more pleasant and make more of a contribution to the ultimate objective: training students to be competent, ethical members of the legal profession. For these reasons, I believe that

one of the marks of a healthy, mature student-teacher relationship is the extent to which this evolution can occur during the law school years. Matters such as class attendance, class preparation, and class participation would not then be seen as hoops erected by the faculty through which the student must jump as a condition of joining the professional guild to which the faculty members already belong. Rather they would be perceived as mutual undertakings by fellow professionals in pursuit of a mutual professional goal: training for the law

The enduring nature of the student-teacher relationship

I believe that one of the most poignant of all human dramas concerns the movement of human beings through life's stages, infancy to youth to adulthood and beyond. There are two themes to this drama that have been particularly appealing to me. The first is the comparative speed with which the movement occurs. It is a theme that has fascinated song writers: "Turn around and you're two, turn around and you're four; turn around and you're a young girl going out of the door." Another writer used other words, but the theme is the same: "Is this the little girl I carried? Is this the little boy at play? I don't remember getting older. When did they?"

A second theme is the constancy, across this stream of human change, of certain human characteristics and human relationships. We do move quickly across life's scene. But the same kinds of stories get repeated. The same human relationships exist from generation to generation. And there are the same opportunities for people-to-people contact, guidance, and love. It is indeed a touching theme. But it is this relationship between students and faculty and its enduring nature that makes being a law professor the most rewarding of the lawyering jobs I have to date encountered.



**A Mutual Professional Goal:
Training for the Law**

The Ordinary Religion of the Law School Classroom

Roger C. Crampton

Dean, Cornell Law School

Editor's Note:

This is an abstract of Dean Crampton's article which appeared in the *Journal of Legal Education*, Vol. 79 No. 3, p. 247.

Crampton's paper is a preliminary look at part of the intellectual framework of law and the legal profession in the United States: the unarticulated (and usually unexamined) value system of legal education which is the underlying force of what he calls the "ordinary religion of the law school classroom." A clear understanding of the value system which permeates the educational enterprise is a prerequisite to its change and improvement.

According to Crampton, "The essential ingredients of the 'ordinary religion' of the American law school are: a skeptical attitude toward generalizations, an instrumental approach to law and lawyering, a 'tough-minded' and analytical attitude toward legal tasks and professional roles, and a faith that man, by the application of his reason and the use of democratic processes, can make the world a better place."

The foremost task of legal education is to inculcate a skeptical attitude towards generalizations, principles, concepts and rules. Lawyers are taught that legal rules are but the normative declaration of particular individuals, conditioned by their own peculiar cultural milieu, and not truths revealed from on high. A lawyer learns to distinguish between the generalization that states his desires and the facts that dominate the real world.

This skepticism is taught in many ways. First, students are given a steady diet of borderline cases which show that there are no right answers, just winning

arguments. Second, students are taught to perceive an arbitrariness in categories and line-drawing which go beyond the rule of genuine reason and value. Third,

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an overemphasis is placed on the uncertainty and instability of law in order to counter-balance black letter law. Fourth, advocates are taught to take goals for granted by supposing that the proper goal of a lawyer is merely to accept the

The Ordinary Religion of the Law School Classroom



The Ordinary Religion of the Law School Classroom

goals and values of his client. Fifth, the law school emphasis is on teaching lawyers to be appliers of the law rather than to be creators of the law. Sixth, teachers avoid an explicit discussion of values in order to avoid "preaching or indoctrination."

Students are given a steady diet of borderline cases which show that there are no right answers, just winning arguments.

A second basic feature of this "ordinary religion" is that the law is viewed as an instrument of achieving social goals and nothing else; it is a means to an end, and is to be appraised only in the light of the ends it achieves. The lawyers primary task is that of the craftsman or skilled technician who can work out the means by which the client or the society can achieve its goals. This instrumental view of law presents the law student with two models of professional behavior: the hired gun and the social engineer. This existence of "tough-minded" models is the third basic feature of the "ordinary religion."

The fourth feature, which comes closest to being recognized as religious tenet, is a faith in man's ability to use reason and the democratic processes to make a better world. (Ironically, this optimistic and idealistic tenet of the "ordinary religion" seems contradictory with the first feature, i.e. skepticism.)

The sources of this "religion" are: One, intellectual trends in the general culture surrounding the law schools; two, the formal law school curriculum; and three, the informal or hidden curriculum that encompasses what students learn apart from the formal curriculum. (It is this third course which has perhaps the greater effect on the development of ethical attitudes.) The example of teachers and administrators, the implication by students that matters not included in the formal curriculum are unimportant to lawyers, and the power of the student culture in affecting attitudes toward grading, examinations, competitions, status and success all contribute to the development of ethical attitudes. Ethics and values in and of themselves are never

fully discussed in the formal curriculum of a law school.

What are the moral implications of this "ordinary religion"?

For the most part Cramton sees the "ordinary religion" expressed in the law classroom as being too absorbed with the internal mechanics and consistency of the legal system, and too little concerned with its effects on people. It exalts rationality over other values, and neglects the humane aspects of personal development and the emotional aspects of the professional relationship while failing to develop the capacities of imagination, empathy, self-awareness, and sensitivity.

On the other hand it does have its good side. The law which had previously been viewed as mysterious and mystical now brings humanitarian and egalitarian aims to the center stage. There is a heightened concern for just results.

But in the end Cramton paints a bleak picture:

"Modern dogmas entangle legal education — a moral relativism tending toward nihilism, a pragmatism tending toward an amoral instrumentalism, a realism tending toward cynicism, individualism tending toward atomism, and a faith in reason and democratic processes tending toward mere credulity and idolatry. . . . Our indifference to values confines legal education to the "what is" and neglects the promise of "what might be."

This bleakness comes from the assumption that law and truth are relative. But he does state that if there is really something that can be called truth, beauty or justice — even if in man's finiteness he cannot always agree on what it is — then law school can be a place of searching and creativity that aspires to identify and accomplish justice.

He warns that if ethical relativism reigns supreme, law will become ever more complex and detailed and a law school would become no more than a trade school. Cramton concludes that "Law schools and legal educators are inevitably involved in the service of values."

This instrumental view of law presents the law student with two models of professional behavior: the hired gun and the social engineer.

For the most part they serve as the priests of the established order and its modern dogmas. The educator has an obligation to address the values that he is serving,

The example of teachers and administrators, the implication by students that matters not included in the formal curriculum are unimportant to lawyers, and the power of the student culture in affecting attitudes towards grading, examinations, competitions, status and success all contribute to the development of ethical attitudes. Ethics and values in and of themselves are never fully discussed in the formal curriculum of a law school.

and there is room for at least a few prophets to call the legal profession and the larger society back to the covenant faith and moral commitment that it has forsaken.

Abstracted by Jill Olsen,
2nd year law student



(See the following page for Professor Stephen M. Fuller's comments on this article)

A Short Comment

on

The Ordinary Religion of the Law School Classroom

Stephen M. Fuller, Professor of Law



Editor's Note:

Professor Stephen M. Fuller has served on the faculty of the J. Reuben Clark Law School since 1976. He holds a B.A. and an M.A. in History from Arizona State University. He also has a Ph.D. in History from the University of New Mexico. He received his J.D. Degree from the University of Tulsa and an LL.M. from the University of Virginia. He is the author of many articles, including "Contemporary Approaches to the Study of Legal History and Jurisprudence," 10 *Tulsa Law Journal* 4 (1975), and "Historical Antecedents of the Modern Doctrine of Judicial Review," *Utah Bar Journal*, Summer 1977. He returned recently from Chicago where he was a delegate to the American Society for Legal History.

We are indebted primarily to Dean Cramton for his laudatory and probably successful attempt to reveal the existence of a large unexamined consensus in legal education: one which has assumed (in certain quarters) the certainty, if not the dignity, of a religion. There is little new contained in the article because most of its themes have been consistently reiterated for a generation by such diverse figures as Lon Fuller, F.S.C., Northrup and Cal Woodard.

As such, the article is a triumph of what the intellectual historian describes as "popularization", rather than any original contribution to thought. However, in an age when theory and abstract thought generally are held in such low repute, one must be grateful for whatever seizes our attention and focuses our fleeting glance on the more important and abiding issues.

The article correctly reveals the existence of a pervasive instrumental conception of the role of law in society. The lawyer has become a sword bearer wielding his instrument indiscriminately in pursuit of often hastily formulated goals, which are defined as socially desirable policy aims. The relationship between engineering and physical science is analogous to that existing between lawyering and social science. Of course, our reigning pundits give lip service to such ancient shibboleths as "The Rule of Law," never stopping to ponder that an instrumental conception of law inevitably focuses attention on the identity of the sword bearer rather than on the law's normative or substantive content.

Increasingly we view law as something to rule by rather than a body of normative principles to be ruled by. Legal instrumentalism is antithetical to the Anglo-Saxon Rule of Law notion as bequeathed to us by a tradition antedating the founding of this country. Simply calling an inherently arbitrary administrative impulse the rule of law does not make it so, any more than cursing the darkness produces light. In essence we are dealing with rival faiths; on the one hand there is social science and administ-

ration, on the other hand, the law as conceived by Blackstone, a reflection of the higher orders of reality.

Underlying the crisis in modern legal education is a precipitous decline in the idea of transcendence itself. Not only the sacred, theistic notions of reality, but also the secular Renaissance conception of transcendence. Ours is the first period in Western History that has rendered the grand debate between faith and reason a vestigial remnant of a less enlightened age. As a direct consequence relativity and reductionism in modern thought have produced a culture which is "lost in a forest of sign posts".

Increasingly we view law as something to rule by rather than a body of normative principles to be ruled by.

Daniel Boorstin describes our contemporary dilemma as a severe timespace distortion. We know everything about this moment but our collective amnesia prevents us from fully appreciating the grandeur of our cultural and legal inheritance. In short, the problem is really the impact of modernity on prevailing conceptions of law and the means of educating lawyers. Such a reversal of the course of history from an obsession with the unseen to the current fixation with the seen has profound value implication for those whose ethical roots are deeper than the present century. We who believe strongly in the supernatural should at least be aware that five days a week we are implicitly or explicitly communicating religious values in the law classroom which are quite often irreconcilable with those we attempt to communicate in our various ecclesiastical undertakings. Awareness is not synthesis but at least it is the beginning of diagnosis.

The Ordinary Religion of the Law School Classroom



Statistically Speaking . . .

According to the information provided by the American Bar Association, based on a combination of Law School Admission Test scores (LSAT) and grade point average (GPA), the law school at Brigham Young University ranks 13th among the 167 law schools accredited by that organization. This ranking is based on the combined averages of the two scores, not upon LSAT or GPA alone.

Editors Note:

The following statistics were provided by Lola Wilcox, admissions officer, and Ann Mae Gould, placement director for the law school.

Here they are, the statistics. The magic numbers. Of interest to all. They may mean everything. They may mean nothing. According to the Admissions Office 150 new law students were admitted this year.

Of that number 127 are males (85%) and 23 are females (15%). The second year class started out with 149 students, 126 males (85%), and 23 females (15%). The third year class had 152 students, 138 males (91%) and 14 females (9%). **Total for the school:** 391 males (87%) and 60 females (13%).

Many students are temporarily away on MBA programs or working and will return to the law school. They are counted with the class in which they entered. Current enrollment is 442.

In the new class, 61% of the students are married. This is compared to 50% for the 2nd year class when it entered and 59% for the 3rd year class when it entered. **Total for the school:** 59% married. The average age for all the classes is 24.5 years old.

LSAT Scores

The highest LSAT score for the 1st year class was 800. The average LSAT score for that class was 644. The highest LSAT in the 2nd year class was 746, average was 635. The highest LSAT in the 3rd year class was 762, average was 630. **Average for the school:** 636.

GPA

The highest GPA in the 1st year class was 3.96, average was 3.6. Highest GPA for the 2nd year class was 4.0, average was 3.52. Highest GPA for the 3rd year class was also 4.0, average was 3.55. **Average for the school:** 3.56.

Index Number

The most important number in determining who is to be admitted is the index number (LSAT score plus cumulative GPA times 200). The law school no longer takes into account an applicant's last 60 units in determining the index number. The highest index number for the newly admitted class was 1578, the average was 1360, (1600 is a perfect score). The highest for the 2nd year class was 1540.

average was 1347. Highest for the 3rd year class was 1530, average was 1432. **Average for the school:** 1349.

The new class comes to the law school from 30 other schools, from such varied places as the U. S. Naval Academy, Duke, Stanford, and Michigan. The 2nd year class is the most varied, coming from 57 other schools, including the U. S. Air Force Academy, UCLA, Stanford, Princeton, Westpoint, Berkeley, and the University of Lethbridge (Canada.) The members of the 3rd year class come from 34 other schools, including the University of Georgia, Berkeley, Rice, and Central Michigan.

Undergraduate Majors

The most common undergraduate majors for the new class are Political Science (16%), English (13%), Accounting (9%), History and Business (6% each), Psychology (5%), Social Science (4.5%), Modern Languages (4%), Sociology, Humanities, and Economics (3% each). For the 2nd year class it was Political Science (15%), followed by Accounting (12%), English (10%), Economics and History (6% each), Modern Languages and Social Science (5% each), Math, Engineering, Humanities, Psychology, and Business (3% each). Most common in the 3rd year class are Political Science (13%), Business and Accounting (9% each), English (8.5%), History (8%), Social Science (6.5%), Modern Languages (5%), Psychology, Economics, and Sociology (4% each), and Math (3%). **Total for the school:** Political Science (15%), English (11%), Accounting (10%), History (6.6%), Business (6%), Social Science (5%), Modern Languages and Economics (4.4% each), Psychology (4.2%), Sociology (3.3%), Humanities (2.6%), Math (2.4%), Engineering (2%), Journalism (1.5%), and Speech (1%).

Missions

98% of the students in the law school are members of the LDS Church. 334 of these (74%) have served full-time two-year missions for the Church: 78% of the new class, 66% of the 2nd year class, and 77% of the 3rd year class.

Foreign Missions

Many went to foreign countries, 65% of the 1st year missionaries served in a foreign

country, 52% of the 2nd year class, and 63% of the third year class. The most common places for foreign missions among the 1st year students were Japan and Germany (10% each), followed by Guatemala (6%), then Argentina and Brazil (5% each). For the 2nd year students it was Brazil (14%), China (13%), Germany (10%), Japan and Italy (9% each). In the 3rd year class it was Japan (15%), Germany (11%), Italy, Brazil, and England (6% each), and France (5%). **Total for those serving missions in foreign countries:** (Japan 11%), Germany (10%), Brazil (8%), Italy (5%), France (4%), China and Guatemala (3% each).

Applications Completed Number Admitted

For the last three years the law school has received an average of 811 applications per year. Of this number an average of 600 students complete applications and an average of 150 new students are admitted, or approximately 25% of those who complete applications.

Upon Graduation

What do they do with their law degrees when they graduate? 55% go right into law firms. Of this number 12% become self employed, 41% go to small firms (5 or less), 22% go to medium firms (6-15), 13% go to large firms (16-50), and 12% go to very large firms (over 50).

4% go to work for corporations, 2% go into nonlegal work, 1% go to banks and 1% go into accounting firms. 5% go into the military, 1% go into legal services, and 2% go on for more degrees.

Clerkships for Graduates

Out of the three classes that have graduated from the law school, two students have received Supreme Court clerkships, ten have received Circuit Court clerkships, seven have received U.S. District Court clerkships, and eight have received State Supreme Court clerkships.

BYU has the distinction of being the only law school in United States history to have a member of its charter class appointed as a clerk to the United States Supreme Court. The next year another BYU graduate received the same appointment. Statistically this is thirty years worth of Supreme Court clerkships in two years.



The First Annual J. Reuben Clark Law School AMBULANCE CHASE

The question of who is more adept at chasing ambulances, doctors or lawyers, was answered at the First Annual Ambulance Chase sponsored by the J. Reuben Clark Law School Student Bar Association, held recently in Provo. The doctors triumphed over the legal community in a 3½ mile marathon run by nurses, doctors, law students, journalists, administrators, lawyers, wives and children.

The race started at the law school at 7:30 a.m. and ended at Utah Valley Hospital, where participants and spectators alike were served breakfast and medals were awarded to the winners. The race was led by an ambulance provided by the Utah Valley Hospital emergency room. Another ambulance followed the runners to give first aid to any who needed it, and a horse-drawn hearse from Berg Mortuary provided back-up support for those left behind by the ambulance.

The Second Annual Ambulance Chase will again be held next September in Provo. All who wish to participate are invited to enter.

Several hundred runners participated in the race, which was divided into different classes according to age and occupation, with an open class for the general public. Several whole families participated. One doctor ran the course in his surgical green uniform. The youngest to finish was four years old. Several hundred spectators were on hand to witness the long-anticipated spectacle.

First across the finish line was Paul Cummings, former BYU track star and NCSS-champion. His time for the 3½ miles was 16 minutes, 25 seconds.

Dr. Lyman Moody, a Provo cardiologist, was the first doctor across the finish line. Rex E. Lee, Dean of the Law School, was the first lawyer to cross, and Ed Wasiura was the first law student to finish. The event received wide publicity and requests to enter next year's "chase" have poured in from across the state as well as many from other states. Many have started training programs to better this year's performance.

The Second Annual Ambulance Chase will be held next September in Provo, Utah. All who wish to participate are invited to enter. The lawyers will again attempt to defeat the doctors, and other occupations are invited to try their hand.

For more information write to: Ambulance Chase, % Clark Memo, J. Reuben Clark Law School, Provo, Utah 84602. Dates, classifications for runners, and travel and lodging information will be provided upon request. The ambulance chase is an annual activity and will be held every September in Provo, Utah.

