

Spring 1979

# J. Reuben Clark Memo: Spring 1979

Brigham Young University School of Law

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J. REUBEN CLARK

# MEMO:

BRIGHAM YOUNG UNIVERSITY - SCHOOL OF LAW



**Gerald R. Ford**

The "Imperial Congress"

**Carl S. Hawkins**

The Circuit Judge Nominating Commission

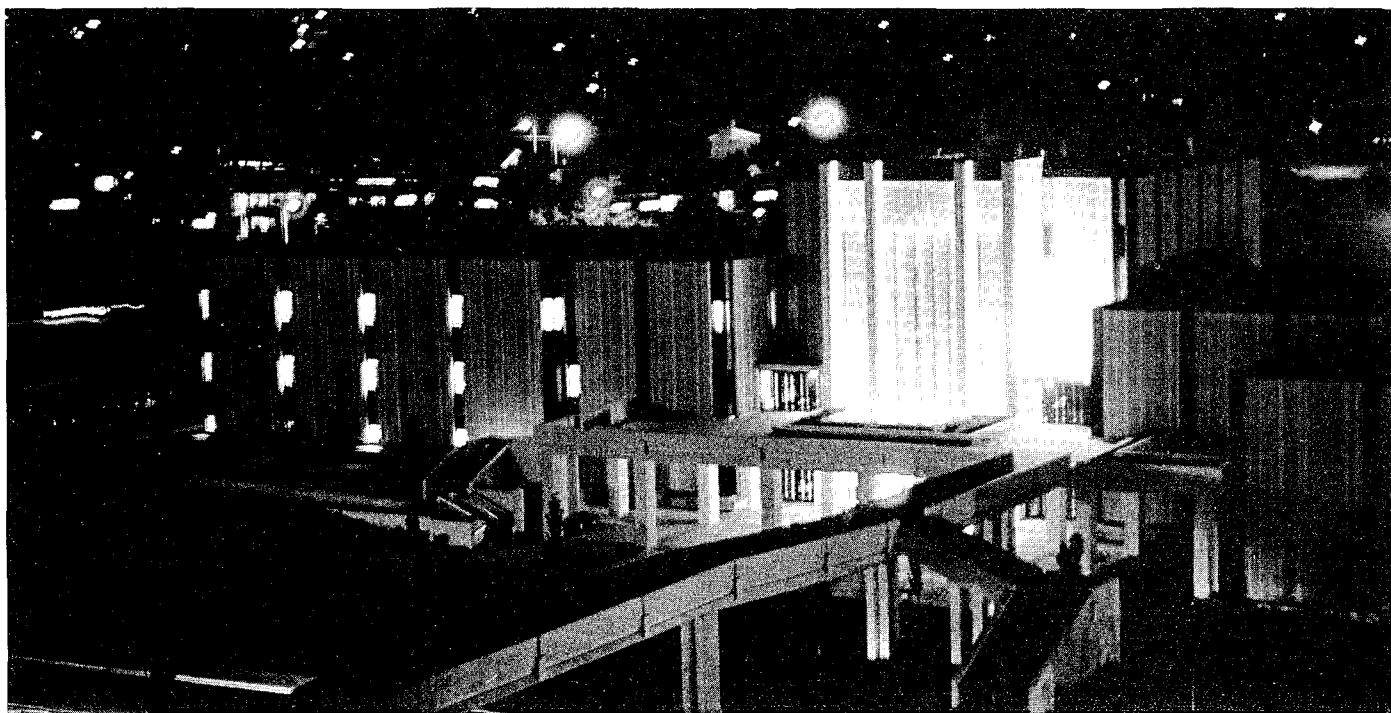
**Calvin Woodard**

Jeremy Bentham v. Sir William Blackstone

VOLUME 1



NUMBER 2



# In this issue of the Clark Memo

In this issue the reader will be asked to consider many different facets of the law, beginning with an essay by Assistant Dean E. Gordon Gee that takes a close look at the methodology currently employed by law schools to turn out lawyers. In Mr. Gee's opinion a major restructuring of the legal education process is in order.

The process used to put judges on the circuit bench is then examined in depth by Professor Carl S. Hawkins, giving the reader an inside look at the Circuit Judge Nominating Commission and how it does its work. Professor Hawkins takes the reader through the makeup of the Commission, the screening and interviewing of candidates, and the final selection of names to be recommended to the President. Of particular interest are his own observations on the strengths and weaknesses of the Commission.

On December 4, 1978 students were given the opportunity to be taught in a classroom setting by a former President of the United States, Gerald R. Ford. His often candid observations on the Presi-

dency, the Congress, and the Supreme Court are reproduced verbatim.

Professor Calvin Woodard of the University of Virginia Law School was a recent visitor to the J. Reuben Clark Law School at the invitation of his former pupil Professor Stephen M. Juller. In a set of hour lectures he presented and contrasted Sir William Blackstone's Historical Jurisprudence view of the law with Jeremy Bentham's Instrumental view of the law. Blackstone considered the English Common Law to be the "grandest and noblest" achievement on man, a beacon on a hill. Bentham regarded it as nonsense. Their views, as presented by

Professor Woodard, are summarized by Jill Olsen

On February 15, the first black appointed as president of the United Nations General Assembly addressed the law studentbody. Currently the ambassador to the United States from Ghana, Dr. Alex Quaison-Sackey spoke on "Marriage and the Law in Ghana." Included with some of his remarks is a brief update on Ghana, a country on the threshold of discarding a military government in favor of a civilian democracy.

Featured next is the J. Reuben Clark Law Society, established to provide a continuing link from the Law School to its graduates, described by Dean Rex Lee as a "mutually beneficial relationship." This is followed by the announcement of the new student leaders of the Co-curricular Programs, the National Moot Court Competition and the 5th Annual J. Reuben Clark Moot Court Competition.

And finally, on the lighter side, the classic statement on what would happen if doctors were educated in the same manner as lawyers.



Scott Wolfley, Editor

J. REUBEN CLARK

# MEMO:

BRIGHAM YOUNG UNIVERSITY - SCHOOL OF LAW

## CLARK MEMO

Volume I  
Number 2

J. Reuben Clark  
School of Law

Brigham Young  
University  
Provo, Utah  
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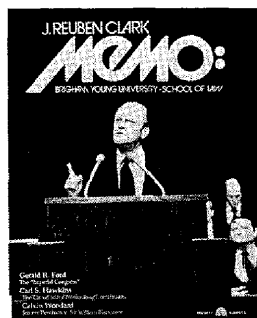
Editor:  
Scott Wolfley

Associate Editor  
Jill Olsen

Photography:  
Mark A. Philbrick  
David Lilly  
Michael Eldridge  
Keith Judd

Graphic Design:  
Marilyn Little  
Rob Sloat

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Former President Gerald R. Ford  
addressing the B Y U  
studentbody in the Marriott  
Center

Back Cover:  
The First Presidency  
at the Law School

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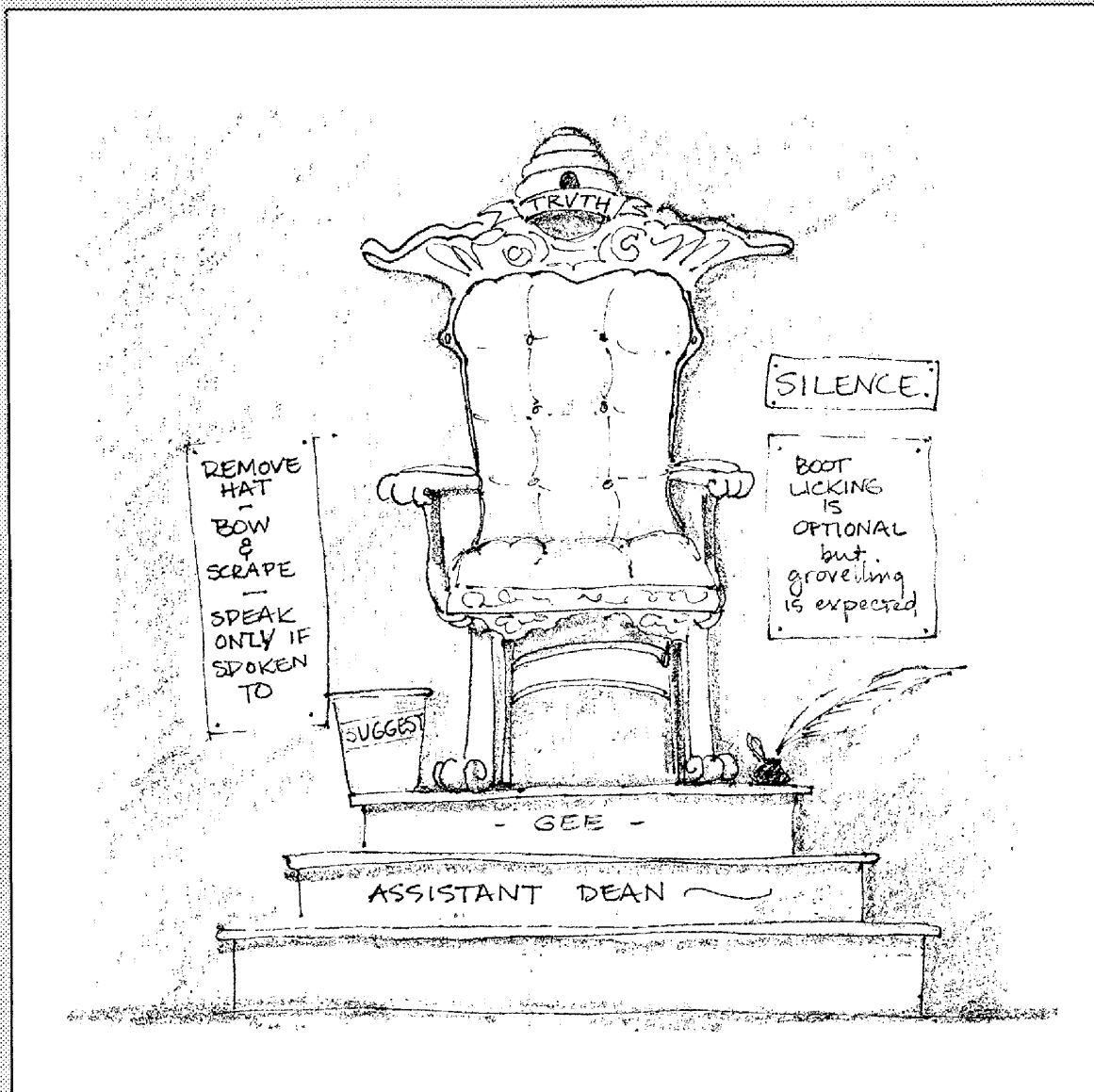
The  
J. Reuben  
Clark  
Law  
Society





# From the Administration

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# Legal Education:

# McDonald's or Antoinettes?

E. Gordon Gee, Assistant Dean

As we enter the decade of the 80's it is time for legal educators and members of the legal profession to ask the question: "Should legal education take a new direction?" I believe that the answer to that question is yes. The training of lawyers as we know it in this country can be traced to the appointment of Christopher Columbus Langdell as Dean of the Harvard Law School in 1870. At a time when educational standards were lax and it was still common to get a legal education by working in a lawyer's office, Harvard, under the direction of Langdell began the trend toward academically based legal education.

The case method of instruction in law school was Langdell's principal academic legacy. While requiring fledgling lawyers to study cases can hardly be said to be revolutionary, the notion of grouping cases together in a book devoted to a particular area of law was a great innovation at the time. Once established, the case book method became the predominant pedagogical tool of law teachers. There have been notable attempts to break away from the case book approach, but even today it remains the almost universal method of instruction during the first year of law school and in many, if not most, second and third year courses. In effect, legal education has become the McDonald's of professional training. We have found a formula which apparently works, and with rigid "quality control"

through the auspices of the American Bar Association, we put out a fairly decent "hamburger." And not unlike McDonald's, the product of legal education is uniform, unimaginative, and mass-produced. Lest anyone be upset let me hasten to add that this state of affairs

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**. . . in order for law schools to meet the challenges of the 80's we must move from the time honored "hamburger stand" approach and attempt to become an educational Antoinettes.**

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is not due to the product, but due to the process. It is now 110 years since Langdell went to Harvard. The major innovations in legal education in that period of time have been the introduction of seminars, some problem oriented courses, and teaching tools which are now called "Cases and Materials on \_\_\_\_\_" rather than merely "Cases on \_\_\_\_\_". Other than these refinements, the legal education process has changed very little during the

past century. One could argue that once a successful formula is found that formula should never be changed. Yet, such complacency is hollow reasoning. A review of our sister professions of medicine, business, and accountancy show tremendous energy in experimentation and development of new and exciting pedagogical techniques — all which have contributed to the betterment of those professions. Indeed, Langdell's legacy has apparently become a chain of bondage, rather than a tool of excellence.

Up to this point legal education and the training of lawyers has survived, even prospered, despite the lack of instructional imagination in the law schools. This will soon end. For one reason the "salad days" of legal education are over. The enormous volume of applications for available spaces in law schools will soon diminish, meaning that the consumer will have a say. Yet another reason can be found in a recent newspaper article where the writer stated: "Not too long ago I printed a survey showing that in terms of trust, the American people ranked lawyers right up there with tarantulas. I immediately got angry letters complaining that the survey had insulted the tarantulas." This escalating distrust of the legal profession will exert additional pressures on the law schools for improved training methods. Finally, the perceived glut, whether true or not, of lawyers on the job market will require us to rethink what the role of a lawyer in

society is and should be.

This brings me to the second part of the analogy found in the title to this small essay. *I believe that in order for law schools to meet the challenges of the 80's we must move from the time honored "hamburger stand" approach and attempt to become an educational Antoines.* As you may remember, Antoines, a great New Orleans restaurant, offers to its customers on any given day an enormous selection of entrees, all cooked to perfection. Likewise, law schools must expand their vision in terms

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**Not too long ago I printed a survey showing that in terms of trust, the American people ranked lawyers right up there with tarantulas. I immediately got angry letters complaining that the survey had insulted the tarantulus.**

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of curricular offerings and pedagogical processes. Let me commit further heresy: we must stop thinking of law schools as places where only those who want to practice law in the most traditional sense come, but rather as a place where people who want to receive training which will be helpful in pursuing a host of careers can find refuge. In a very real sense I believe that the lawyer is the last of the renaissance men. We must revive that notion by training people to be practicing lawyers, government officials, teachers, administrators, and businessmen. To accomplish that goal will require a major restructuring of the legal education process. We will have to substantially improve the student/faculty ratio as is presently the norm in most law schools. *We will have to take greater advantage of the rich resources of the University community rather than maintaining the typical law school "bastion mentality".* We will have to recognize the value of other disciplines and make use of those disciplines in improving the training of students who have chosen to come to law school. Finally, we will have to broaden our view of what makes a

good law student, thus creating a more heterogenous body where people with many interests can be served. And, we

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**We must take greater advantage of the rich resources of the University Community rather than maintaining the typical law school "bastion mentality."**

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will have to do all this without sacrificing educational quality.

This new direction for legal education will not be easy to set in motion. Institutions of higher education are generally going through a period of financial

retrenchment. The likelihood of them being willing to throw more money into what has, up to now, been one of the more profitable units within the university is problematical. The status quo orientation and pressures of a practicing bar will continue to exert a strong influence on law schools to continue along their traditional paths. Indeed, many members of the practicing bar find great fault with law schools as already being too "theoretical" and not providing enough "practical training" for students. There may be resistance from law faculty who feel comfortable with the present state of legal education and will, therefore, not want to restructure their comfortable living quarters. And, no doubt there will be some student resistance because they may view this as one more attempt by the law schools to raise their tuition and force faculty views on them

E. Gordon Gee  
Assistant Dean



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## Legal Education: McDonald's or Antoinettes?

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without commensurate cost benefits and input. Yet, as wrenching and difficult as it will be to redirect the process of legal education, it must be done for survival sake.

Up to this point I have spoken about legal education in general. I would not want to stop without mentioning how this proposal affects the J. Reuben Clark Law School. First, I have had an opportunity to visit a number of law schools during the past three years, and that experience has shown that our school is in the forefront of many innovations taking place in legal education. This is true because we have a creative faculty who are receptive to new ideas and who are constantly trying to improve the teaching

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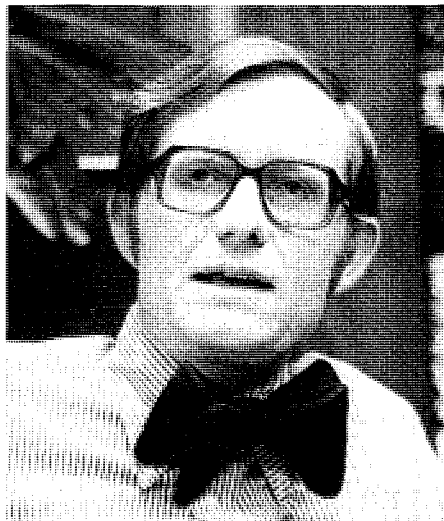
**In a very real sense I believe that the lawyer is the last of the renaissance men. We must revive that notion by training people to be practicing lawyers, government officials, administrators, and businessmen.**

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process. Secondly, we are in a unique position because we carry with us very little traditional baggage. This is a new law school, and we are creating our own traditions which gives us a chance to make major changes before patterns be-

come too set. Next, we have unique and supportive students who, with a modicum of complaining, submit themselves to experimentation. Finally, we are situated in a university which is not hostile towards its professional schools. The support of the university administration, the Board of Trustees, and other faculties within the University will continue to give aid and comfort as we grope our way toward a meaningful restructuring of legal education at Brigham Young University.

Legal education in this country is unquestionably at a cross roads. One road leads toward the siren song of practical training and its concomitant trade school approach. The other will hopefully provide us with law graduates who are intellectually curious people with a broad perspective on the possibilities and limits of human life in organized communities. Big Mac or Cordon Bleu?



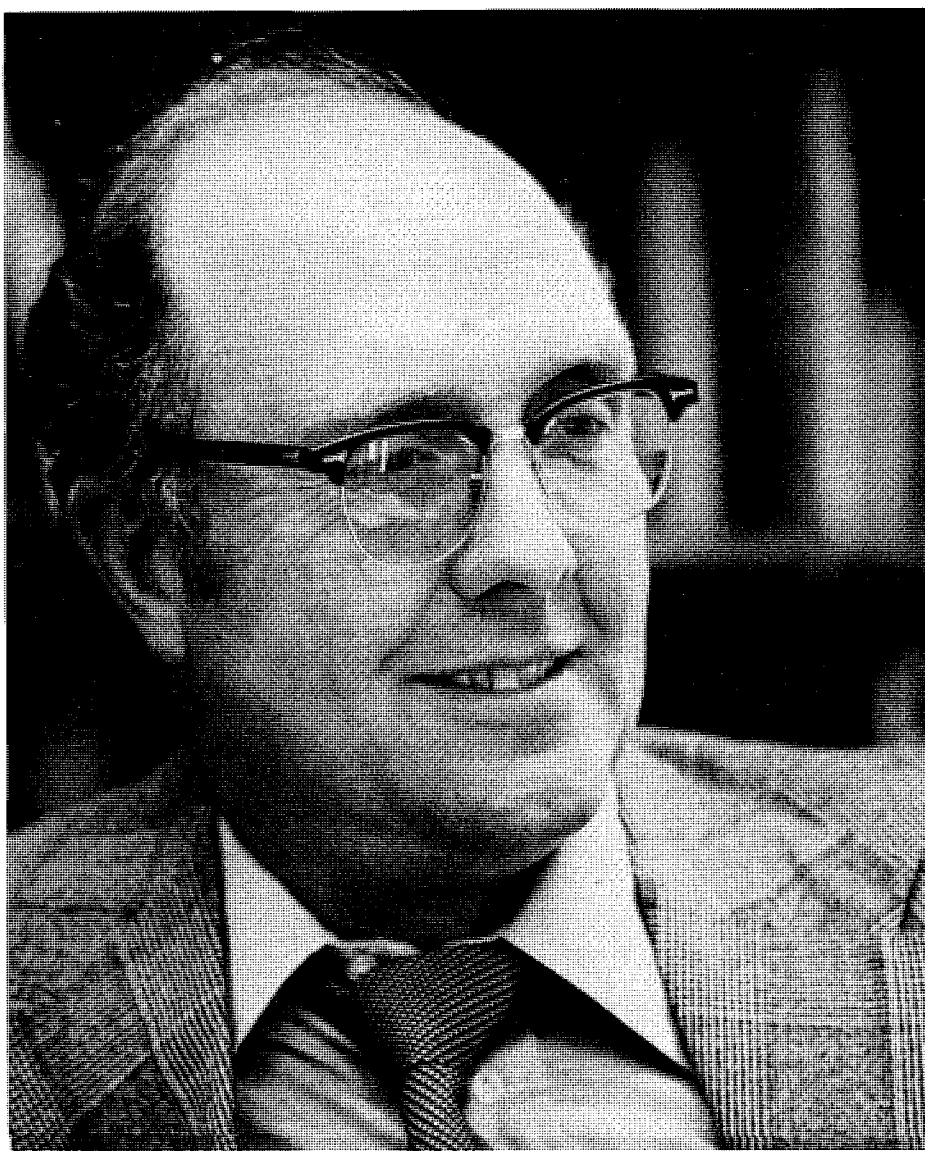
"Big Mac or Cordon Bleu?"



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# “Merit Selection THE CIRCUIT JUDGE COMMISSION

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by  
Professor  
Carl S. Hawkins

Professor  
of  
Law

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**Editor's Note:**

Professor Carl S. Hawkins has been a member of the faculty since 1973. He holds a B.A. in Political Science from Brigham Young University and received his J. D. Degree from Northwestern University School of Law. Before coming to the J. Reuben Clark Law School, Professor Hawkins taught at the University of Michigan Law School. Prior to that he was associated with the Washington D.C. firm of Wilkinson, Cragun, Barker and Hawkins, which he entered after clerking for Chief Justice Fred M. Vinson of the U.S. Supreme Court. He has served on countless boards and committees and is a prolific author.

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# of Federal Judges” DGE NOMINATING EXPERIENCE

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Candidate Jimmy Carter had promised to support merit selection of federal judges, but senatorial politics required a compromise. The President could have his way with appointments to the Circuit Court of Appeals, which served a wider region than the constituency of any one Senator, but the appointments of federal district judges would still be based upon senatorial nominations, with the President urging the Senators to use nonpartisan advisory commissions.

Less than a month after his inauguration, by Executive Order 11972, February 15, 1977, the President established the United States Circuit Judge Nominating Commission to investigate the qualifications of applicants and recommend the persons best qualified for presidential appointments to the United States Circuit Court of Appeals. The Commission is divided into thirteen panels: one for each judicial circuit, with two each for the geographically large Fifth and Ninth Circuits. Each panel has eleven members including the chairperson, with representation of both sexes, ethnic minorities, lay citizens as well as lawyers, and a resident of each state within the panel's geographic area.

The Executive Order prescribes minimum qualifications for persons to be nominated as circuit judges, including membership in good standing of at least one state bar, integrity and good character, sound health, outstanding legal ability, commitment to equal justice under law, and judicial temperament. Panels are admonished to consider persons who would balance the composition of the court by meeting any "perceived need". A later Executive Order of May 11, 1978, No. 12059, more specifically encourages the Panels to seek out well qualified

women and members of minority groups as prospective nominees. The Panels are given sixty days after notification of a vacancy within which to investigate prospective nominees and report to the President the names of at least three persons and not more than five persons found to be best qualified. The procedure for selection is left largely to each Panel, with a

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**The panels are given sixty days after notification of a vacancy within which to investigate prospective nominees and report to the President the names of at least three persons and not more than five persons found to be best qualified.**

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few specific requirements for public notice and invitation for interested candidates to apply, a requirement for returning a prescribed questionnaire within a stated time, and a requirement that all names recommended to the President must have the support of a majority of the panel. Each vacancy is filled by nominees from a state designated by the President, usually the state from which the position had previously been filled.

This nominating process has been used by the President in making sixteen appointments to the United States Circuit Courts of Appeals, and it will be used in filling the 35 new positions created by the Omnibus Judgeship Bill of 1978. The Tenth Circuit Panel was used to nominate

candidates for two appointments in 1977, one from Utah and one from Kansas. The Panel was recently reactivated to make nominations for an additional position from Oklahoma.

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## TENTH CIRCUIT PANEL

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The Tenth Circuit Panel was first activated in May of 1977 to screen applicants for two vacancies on the Court resulting from the resignations of Judge Delmas C. Hill from Kansas and Chief Judge David T. Lewis from Utah. Eleven members were appointed to the Panel: three each from Colorado and Oklahoma, two from Kansas, and one each from New Mexico, Utah and Wyoming. Five of the eleven members were women and six were men. Seven were lawyers and four were not. Two of the five women were lawyers and five of the six men were lawyers. Five of the seven lawyers were private practitioners from solo practice to small-medium sized firms. The other two lawyers were law teachers. Only one of the eleven Panel members came from an identifiable ethnic minority — a lawyer with Mexican-American lineage.

Nine Panel members were Democrats, while two, including the chairman, were Republicans. All disclaimed knowing why they had been chosen or who had recommended them to the President. Several had been active locally in Jimmy Carter's campaign for the presidency, but most had not been. None was a politically prominent person. Several of the non-lawyer members of the Panel had been active in community affairs and all of the lawyers had been active professionally. The chairman was a veteran litigation lawyer with many years of service in state bar and American Bar Association com-

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## "Merit Selection of Federal Judges"

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mittees.

I learned of my appointment to the Tenth Circuit Panel through a call from the Assistant Attorney General, whom I had not known, asking if I was willing to serve. He did not say upon whose recommendation I had been chosen to represent the State of Utah on the panel. It later became apparent that I had not been

Judge Lewis instructed us on the Court's work and its needs. We reviewed our instructions from the President and the Justice Department and then scheduled dates for publication of notice, submission of applications, and meetings to select candidates for interview and to conduct the interviews in Kansas and Utah. The schedule was tight, because we

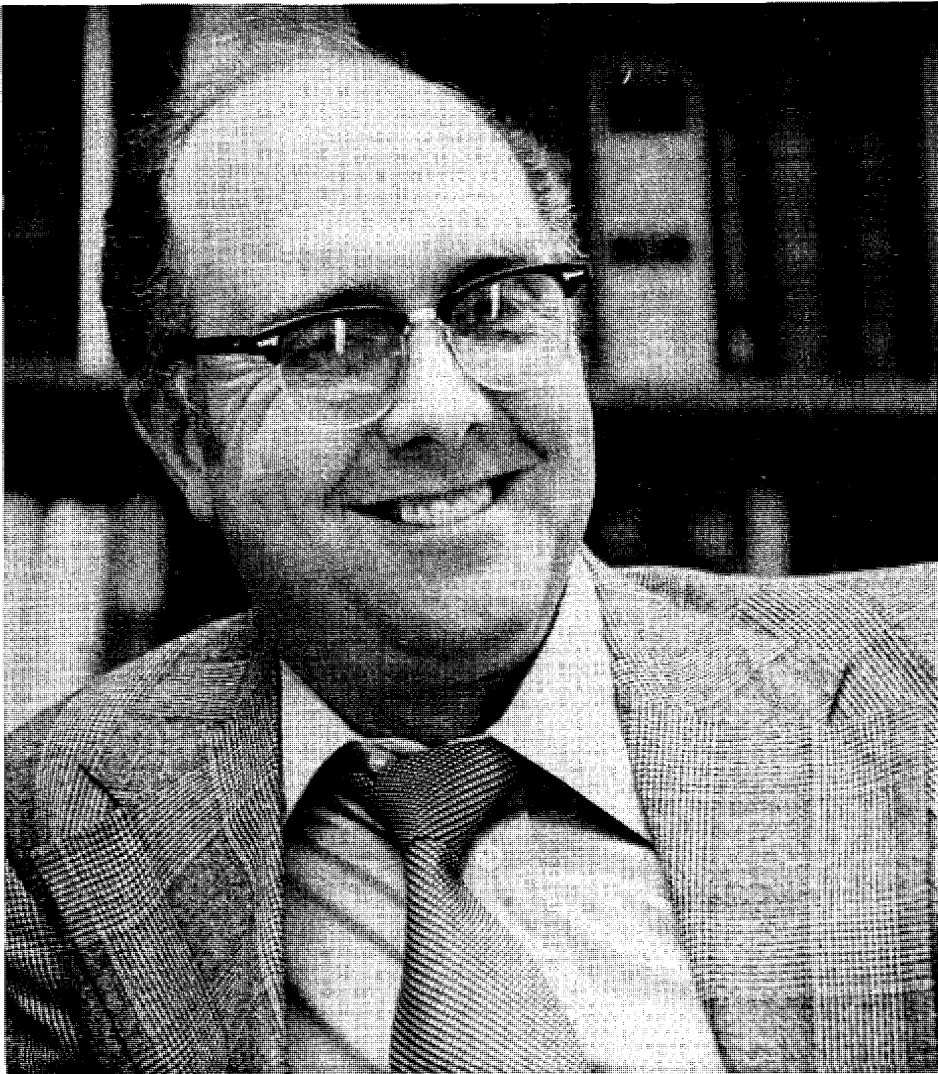
applications before our next meeting, but it also imposed a costly burden upon all of the applicants, because each application required response to a thirty-page questionnaire and the submission of five recent briefs, opinions, or other samples of legal writing.

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### PRE-INTERVIEW SCREENING

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Applications were solicited by published notice and by individual contacts with persons who had been suggested for our consideration and others we thought might be interested. Candidates were required to submit their completed applications by a prescribed date which left us about two weeks to study the files and make such further inquiries and investigation as time would permit. I devoted



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**I learned of my appointment to the Tenth Circuit Panel through a call from the Assistant Attorney General, whom I had not known, asking if I was willing to serve.**

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recommended by the Utah State Bar. They had nothing against me personally and our relations had been cordial, but understandably they would have preferred representation by a practicing member of the Bar.

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### PRELIMINARY PROCEEDINGS

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Our panel met first in Denver for an orientation and planning meeting. Chief

had to select nominees for two positions within sixty days. We rejected the possibility of dividing into subcommittees to facilitate investigation and interviews. Instead, we decided to have all applicants send copies of their questionnaires and supporting documents to every member of the Panel at the same time their original applications were filed with the chairman. This made it possible for each member of the Panel to review all of the

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full time to studying the applications and still did not have as much time as I would have liked for critical evaluation of their professional writing and for making further inquiries of persons who knew the applicants. We received over thirty completed applications from Utah and about twenty from Kansas.

Our Panel met again in Denver to select those applicants to be given further consideration through interviews and to plan the interviewing process. It was a lively meeting, extending over two days with all members of the panel present. We began with an informal review of the candidates, which revealed that all of the panelists had done their homework well. They were familiar with the basic biographical data for all of the applicants and had occasionally made further inquiries about some of the more promising prospects. I was especially impressed with the preparation and participation of the non-

lawyer members of the Panel. While they had special concerns about the candidates' views on current social problems, especially equal rights for women and minorities, they had also worked very hard to evaluate the professional credentials of the candidates.

Following an open discussion of all applicants, we turned to the selection of candidates for interviews. We identified obvious consensus candidates for inclusion and exclusion. After that, it took much discussion and several rounds of voting to agree upon the additional applicants to be interviewed. There were strong differences of opinion on the merits of individual applicants, but at this preliminary state there was a noticeable disposition to include an applicant for interview, even lacking majority support, if several panelists felt strongly enough that the applicant should be interviewed. By this process we reduced the number of applicants for further consideration to ten from Kansas and fourteen from Utah.

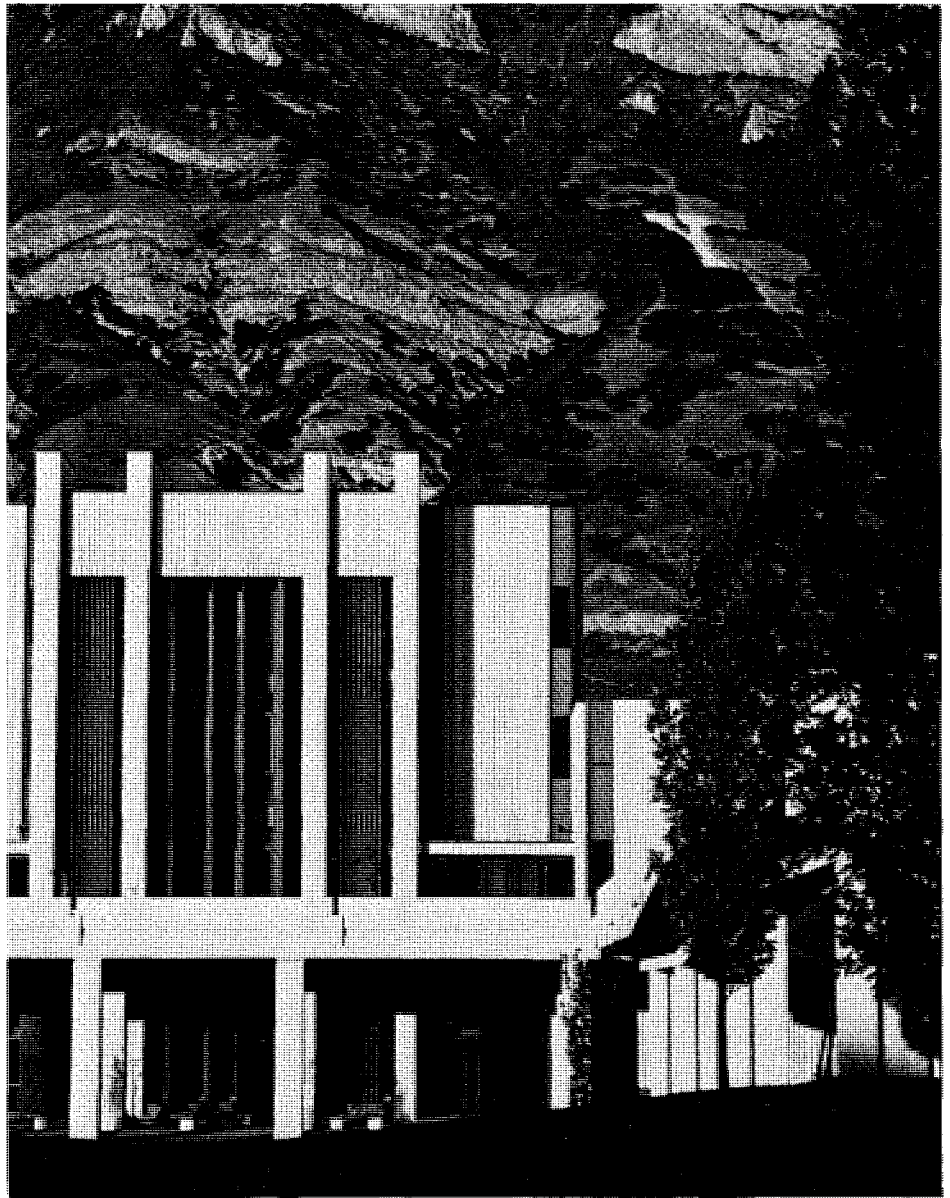
Then we turned our attention to planning the interview process. There were wide differences of opinion about how the interviews should be conducted and it took many hours of discussion to work out a compromise. From hindsight, it has become clear that this compromise was the most important single decision made by our Panel and did more than anything else to assure the success of our future deliberations.

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**We agreed that all interviews would be conducted with the full panel present. Applicants would first be given twenty-five minutes to address, at their own pace, a list of formal questions approved by the entire panel.**

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Professor Hawkins has taught at the Law School since 1973 when it was opened.

a list of formal questions approved by the entire panel. Then for the remaining twenty-five minutes individual panelists would be free to ask any questions they wanted.

Developing the list of approved questions was a difficult task. There was a conflict between the desires of some members of the Panel to have very sharp questions on specific social issues and the belief by other members of the Panel that such questions would be improper. We eventually agreed upon eleven questions which would give the interviewee an open opportunity to reveal his or her knowledge, experience and attitudes re-

specting the role of the federal appellate courts and the administration of civil and criminal justice. More specific probing into controversial social issues would be left to the individual panelists in the second half of each interview.

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#### INTERVIEWS AND FINAL SELECTION

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In July, 1977, the Panel met for two days in Kansas and three days in Utah to interview the remaining candidates and select those to be recommended to the President. All Panel members were present for all of the interviews.

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## "Merit Selection of Federal Judges"

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Applicants were scheduled to appear at hourly intervals. Each applicant was given a half hour before his scheduled appearance to study the uniform questions. After introduction to the Panel, the candidate was asked to take twenty-five minutes without interruption for responding orally to the uniform questions. Then individual members of the Panel would rotate in asking impromptu questions for twenty-five minutes. The candidates' discussion of the uniform questions proved quite revealing. Wide differences in selective emphasis disclosed that some applicants had special experience and critical or creative observations on these questions, while others merely repeated superficial or ambiguous generalities absorbed from their professional culture. Impromptu questions from individual members of the Panel covered a variety of subjects ranging from personal hobbies and recreational interests to attitudes and positions on contemporary social and political issues. Some members of the Panel had misgivings about others asking pointed questions on specific issues which might come before the federal courts, but the answers did reveal something about the temperament of the applicants. The questioning was always polite and there was no quarreling with the applicants or showing disapproval of the answers given.

At first there was difficulty allocating time among individual members of the Panel for impromptu questions. Some members of the Panel, pursuing intensely a line of questions in which they had special interests, took up so much time that there was not enough time for others to ask their questions. But these difficulties were quickly adjusted. Panel members learned to put their questions more efficiently and restrain themselves in the interest of others. With each interview, the chairman directed the impromptu questioning to begin with a different member of the Panel in rotation, so that over time the opportunities for questioning were equalized.

After interviewing the ten candidates in Kansas, the Panel spent one half day in selecting the nominees to be recommended to the President. A period of unstructured discussion of all the applicants was followed by experimental voting, including votes to retain, votes to exclude,

straw votes and weighted rankings of candidates. No one of these methods provided a completely satisfactory process for making the final selections, but through their combined use we arrived at three names who were favored by at least a majority of the Panel. Although some members of the Panel felt very strongly that additional candidates should be recommended to the President, no more could muster the six votes required for inclusion and the Kansas list was closed with three names. The nominations were transmitted to the President without

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ranking and without comments.

In Utah we took two days to interview the fourteen applicants and a third day to select the final five for recommendation to the President. This time the difficulty was in reducing the recommended list to five nominees because there were more than five who had a minimum of six votes. Again, no single method of balloting provided the answer, but by a combination of the methods mentioned above we eventually closed the list with the names of the five applicants who had the most support. From among the five Utah nominees, the President appointed Monroe G. McKay. From among the three Kansas nominees, the president appointed James K. Logan.

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### THE OKLAHOMA POSITION

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The Omnibus Judgeship Bill of 1978 added one position to the Tenth Circuit.

The President allocated that position to Oklahoma and reactivated the Tenth Circuit Panel in December of 1978 to screen the candidates. Ten of the original panelists, including the chairman, were reappointed, so that our work this time was greatly facilitated. It was not necessary to have a preliminary meeting. The chairman through correspondence and telephone calls arranged the schedule for publication, submission of completed applications, and meetings to interview and select the nominees. At a one-day meeting in Denver we narrowed the list of thirty applicants to fourteen to be further investigated and interviewed. The interviews were conducted in Oklahoma City over two days, using the same procedure that had been developed in Kansas and Utah. An additional half day was required to select the nominees recommended to the President. In this instance only four names were submitted. While there were several others with good professional qualifications, only four could command the minimum of six votes required for recommendation. These four names are now pending before the President for his consideration, and I assume that one of them will be appointed soon.

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### PERSONAL OBSERVATIONS

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My experience with the Nominating Commission produced some positive observations.

The process is workable. The eleven members, representing widely diversified interests and including a substantial number of non-lawyers, can work together and focus their efforts effectively on screening the qualifications for judicial candidates. Lay members of the panel demonstrated their capacity to evaluate professional qualifications and proved that they were fully as committed to the task as were the lawyers. Widely diversified political, social and economic interests were compromised to the extent necessary to achieve a working consensus on at least the minimum number of acceptable candidates from each state.

Partisan political influences were effectively limited. As far as I know, no political pressure was imposed upon any members of our Commission to influence their decisions. Public officials and politicians, whom I knew to be intensely in-



terested in these judicial appointments, scrupulously avoided any contact with me during the selection process. In our Commission deliberations, as well as in informal discussion among the members, the political affiliation of candidates was never overtly discussed as being relevant to our selection decisions.

My observation that partisan political influences were effectively limited does not imply that political considerations were completely eliminated from the appointment process. That would probably not be possible and, in my opinion, it would not be desirable. By vesting responsibility for judicial appointments in the President and Senate, the Constitu-

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**My most favorable observation concerning the Commission is that its nominations resulted in the appointment of candidates with good qualifications.**

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tion demands political accountability. The President did not mean to abdicate that political responsibility through the commission nominating process. The Commission was meant to minimize political considerations while the professional qualifications of candidates are being evaluated, but after professionally qualified persons have been nominated by the Commission, political considerations must surely be weighed by the President in making his final choice.

It was unfortunate, in connection with the Utah appointment, that some media commentary argued that the merit selection process had been subverted by political considerations in the appointment of Monroe McKay. The Nominating commission recommended five qualified candidates for the Utah position, including Monroe McKay and David Watkiss. The five nominees were never ranked by the Commission. Indeed we were explicitly instructed not to rank the nominees, presumably so that the President's Constitutional responsibility for making the final selection would not be compromised. Rumor has it that the Justice

Department advised the president that Watkiss and McKay were the two best qualified of the five. Congressman Gunn McKay marshalled political support for his brother, and Governor Matheson marshalled his political support behind David Watkiss. The President appointed Monroe McKay. Some media reports mistakenly implied that Watkiss had been the preferred candidate in the merit selection process. That was not so. The Commission nominated five qualified candidates and fully understood that the final selection was up to the President. While Commission members would have been satisfied with the appointment of any one of the five, including Mr. Watkiss, no nominee had more supporting votes on the Commission than Monroe McKay.

My most favorable observation concerning the Commission is that its nominations resulted in the appointment of candidates with good qualifications. Applicants with mediocre and inferior professional or personal qualifications were screened out. All of the nominees finally recommended to the President had good professional credentials. There were strong differences among members of the Commission as to whether a few of the applicants not recommended to the President had qualifications equal or superior to some who were recommended, but there was no lack of good feeling about those who were recommended. The two appointments which the President made to the Tenth Circuit, Judge McKay from Utah and Judge Logan from Kansas are superbly qualified and have already earned good reports for their work on the bench. When the President makes his appointment from among our Oklahoma nominees, a third judge with excellent personal and professional

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qualifications will be added to the Tenth Circuit.

Notwithstanding these favorable observations, the commission nominating process has not fulfilled all the claims made for it by its supporters.

There has been no apparent moderation of partisanship in the appointments. Up to now, all of President Carter's appointments to the Circuit Court of Appeals (all circuits) have been Democrats and most of them have been quite active in the party. This partisanship exceeds that of President Carter's three predecessors and will cast doubt upon his commitment

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**Applicants with mediocre and inferior professional or personal qualifications were screened out . . . notwithstanding these favorable observations, the commission nominating process has not fulfilled all the claims made for it by its supporters.**

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to merit selection if some Republicans are not appointed soon.

Hopes that the commission nominating process would lead to better representation for women and minorities have not been fully realized. No women have yet been appointed Circuit Judges by President Carter, though it seems quite likely that there will eventually be some women appointed to positions which have yet to be filled. The experience of our Tenth Circuit Panel illustrates the problem. We have no women applicants from Kansas or Utah. Even though earnest efforts were made, we were unable to find any women lawyers who had the required fifteen years professional experience and were interested in applying. We did, however, have two women applicants from Oklahoma and one of them was included among the four nominees recommended to the President. In the other circuits three distinguished black jurists were elevated to three different circuits

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## "Merit Selection of Federal Judges"

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and one Asian-American was appointed. But we had only two minority applicants for consideration, one for each of two vacancies and none for the third, and there were no minority applicants among the nominees we recommended to the President.

My most serious concern about the commission nominating process arises from my belief that the process screened out several of the best qualified prospects. This is a subjective conclusion which is subject to a high risk of personal bias, both as to the qualifications of candidates and as to the circumstances which led to their exclusion.

Several highly qualified people were screened out at the threshold because they did not want to submit to the commission nominating process. Two superbly qualified Republicans, whom I urged to apply, declined because they could not believe their chances for nomination by the Democratically dominated Commission were worth the trouble. A well qualified Democrat decided not to apply because public knowledge that he was trying for the judicial appointment would have compromised his effectiveness in his present position.

Some of the best qualified candidates who did apply were screened out by special interests within the Commission. Several special interests were identifiable, although the groups were fluid and their interests were often subordinated to other concerns. Academicians on the Commission tended to insist upon elite scholarly qualifications before looking for other qualities. The practicing lawyers on the Commission tended to believe that extensive litigation experience was an indispensable qualification. Women members of the Commission were deeply concerned about the candidates' positions on abortion and the Equal Rights Amendment. And shifting combinations of liberals occasionally coalesced over civil rights and equal justice issues. No one of these special interest groups could defeat or nominate a candidate, but any two combining against a candidate could deny him the six votes required for nomination. For example, a candidate who did not have enough litigation experience to satisfy our practicing lawyers and whose views on abortion were unacceptable to our women members could be excluded,

no matter how high his professional, personal, academic and public service qualifications were otherwise. Such combinations eliminated three of the best qualified candidates who came before our Panel, in my opinion.

This is not to imply, and I do not believe, that the persons thus eliminated would have been better qualified than Judge Logan and Judge McKay. But some of those eliminated were, in my opinion, better qualified than some who were recommended to the President. While the decision making process on our Panel successfully screened out persons with mediocre and inferior qualifications, it tended to discriminate among the better

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**If my experience was typical, then more than 1,100 person-hours of Commission members' time was expended on making nominations for each vacancy, and if that time were valued at professional rates it would amount to more than \$100,000.**

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qualified people somewhat erratically on combinations of special issues which were not necessarily the best predictors of superior judicial qualifications.

This does not imply any criticism of the demeanor of my colleagues on the Panel. We were all representing special interests, to some extent, consistent with the apparent logic underlying our appointments. The extent to which we subordinated our special interests to broader concerns varied more accordingly to personality than to the interests represented. The flaw, if any, was in the structure of the Nominating Commission, with members apparently selected to represent a particular combination of special interests. Ironically, the "representation logic" carried far enough would lead to the popular election of judges, which would be the antithesis of "merit selec-

tion". Our Nominating Commission was a hybrid — neither randomly representative nor purely merit-directed in its concerns.

When we met in Oklahoma to interview candidates, we were repeatedly reminded of the late Alfred P. Murrah and the great contributions he had made as a member of the Tenth Circuit Court of Appeals. Candidate after candidate recalled Judge Murrah as probably the greatest jurist to sit on the Tenth Circuit and as the candidate's personal ideal of a federal judge. But Judge Murrah would never have been appointed to the federal bench if he had been required to be nominated by our Commission. At the time of his appointment, he did not have the minimum years of professional experience required by our Executive Order, and it is doubtful that his academic and practice credentials would have satisfied those special interests of our Commission, to say nothing of whether his views on contemporary social justice issues would have been acceptable to other members of our Panel. For similar reasons, such great jurists as Justice Felix Frankfurter and Justice Hugo Black would never have made it through a similar nominating commission process. The nominating commission process is not impeached, by such ad hominem arguments, but they do illustrate some systemic limitations in the process.

Moreover, the nominating commission process is rather costly. One of our applicants estimated that it had cost him more than \$3,000 in billable professional time and incidental expenses to complete his questionnaire. If that expense is multiplied by the twenty or thirty applicants that we had for each position, it becomes a sizeable sum. To that would have to be added the travel and lodging expenses for eleven panel members to meet and interview the candidates, which I would estimate at more than \$5,000 for each vacancy to be filled. I estimate that I spent more than 100 hours on each vacancy, studying the qualifications of candidates, traveling and attending Commission meetings, and communicating with interested persons. If my experience was typical, then more than 1,100 person-hours of Commission members' time was expended on making nominations for each vacancy, and if that time were val-

ued at professional rates it would amount to more than \$100,000.

Nobody would object to such costs if they were necessary to find those candidates with the best professional credentials. But that could be accomplished with much lower expenditures of time, money and effort. An informal advisory committee, composed of three knowledgeable professionals from the state where the appointment is to be made, could have very quickly identified the five best qual-

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**My most serious concern about the commission nominating process arises from my belief that the process screened out several of the best qualified prospects . . . several highly qualified people were screened out at the threshold because they did not want to submit to the Commission nominating process.**

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ified professional persons in Kansas, Utah or Oklahoma, just as surely and just as accurately as did our Commission. As to measuring the candidates' professional and personal qualifications against broader criteria of public interests, the local Senator and the President should be able to do that, or else the political system has failed anyway. Trying to represent the public interest through the commission process runs a risk of distorting the public interest through the skewed composition of the Commission, while obscuring the President's political accountability for how public interests were resolved in the process.

This does not imply that I would favor delegating the evaluation of qualifications to the local bar association and the American Bar Association. In one case where I had the opportunity to compare their evaluation process with ours, theirs

was much more superficial and did nothing to allay public concerns that professional associations may be incapable of rising above guild interests in assessing the qualifications of candidates.

Nobody is opposed to the "merit selection" of judges. Even the advocates of popular election of judges believe that it results in the selection of the best qualified people, except that they would evaluate qualifications more in terms of responsiveness to popular sentiment than in terms of professional skills and experience. The nominating commission process was developed largely as an antidote to the popular election of state

judges. The federal appointment process, even with its occasional abuses, has produced a generally superior bench. The traditional federal appointment process leaves the President and the Senators with ample flexibility to get adequate information on the qualifications of candidates, without resorting to the more cumbersome extremes of the Nominating Commission as it is now constituted. Whether the weighing of public interest in the appointment process is better served by the participation of a nominating commission is a much more difficult question, but my experience has left me with doubts.

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# Former President Gerald R. Ford

at the  
**J. Reuben Clark  
Law School:**

# THE IMPERIAL CONGRESS

Former President of the United States Gerald R. Ford

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## Editor's Note:

On December 4, 1978, former President Gerald R. Ford was a guest lecturer. He appeared at a forum assembly for the general studentbody and then spoke to the Law School in the Moot Court Room. This is the text of his address to the Law School constitutional law classes. It should be noted that Dean Rex E. Lee served as Assistant Attorney General during two years of the Ford administration.

## Introduction by Dean Lee:

We have a guest lecturer for our constitutional law classes this afternoon. For some reason during the regular semester classes, we didn't draw quite this well. During the time that our speaker today was my employer, my contact with him was not frequent, but it was frequent enough for me to form the opinion that this is a man who has not only achieved the ultimate in American public service, but he is also a very fine lawyer and particularly a very fine constitutional lawyer and I am pleased that as part of your legal education you are going to have the opportunity today to verify that fact. It is my privilege to introduce to you the 38th, and if the straight thinkers among us have our way, the 40th President of the United States.

## Former President Ford:

Thank you.

Dean Lee, I am deeply grateful for your more than generous introduction. I might say it is so kind and much too generous. It sounds like an oral obituary on my tombstone. Let me say it is a pleasure to be in a law school environment and have an opportunity to make some comments. I am especially appreciative of Dean Lee's invitation. He was a very valuable member of



Gerald R. Ford addressing law students

my administration over in the Department of Justice. I happen to think it was an outstanding department of the administration under the Attorney General Ed Levy, who recruited such people as your Dean, and also the new governor of the State of Pennsylvania. So you can see the quality of people we had there.

I understand you are discussing, or have been in the process of discussing, separation of powers and the allocation of authority within the various divisions of our government under the Constitution, so I don't have to go back and give you any fundamental observations, except let me reiterate, our system of

**In the days immediately after World War II, I think the country went through what has been pretty well described as the Imperial Presidency . . . I like to categorize the present situation as the Imperial Congress.**

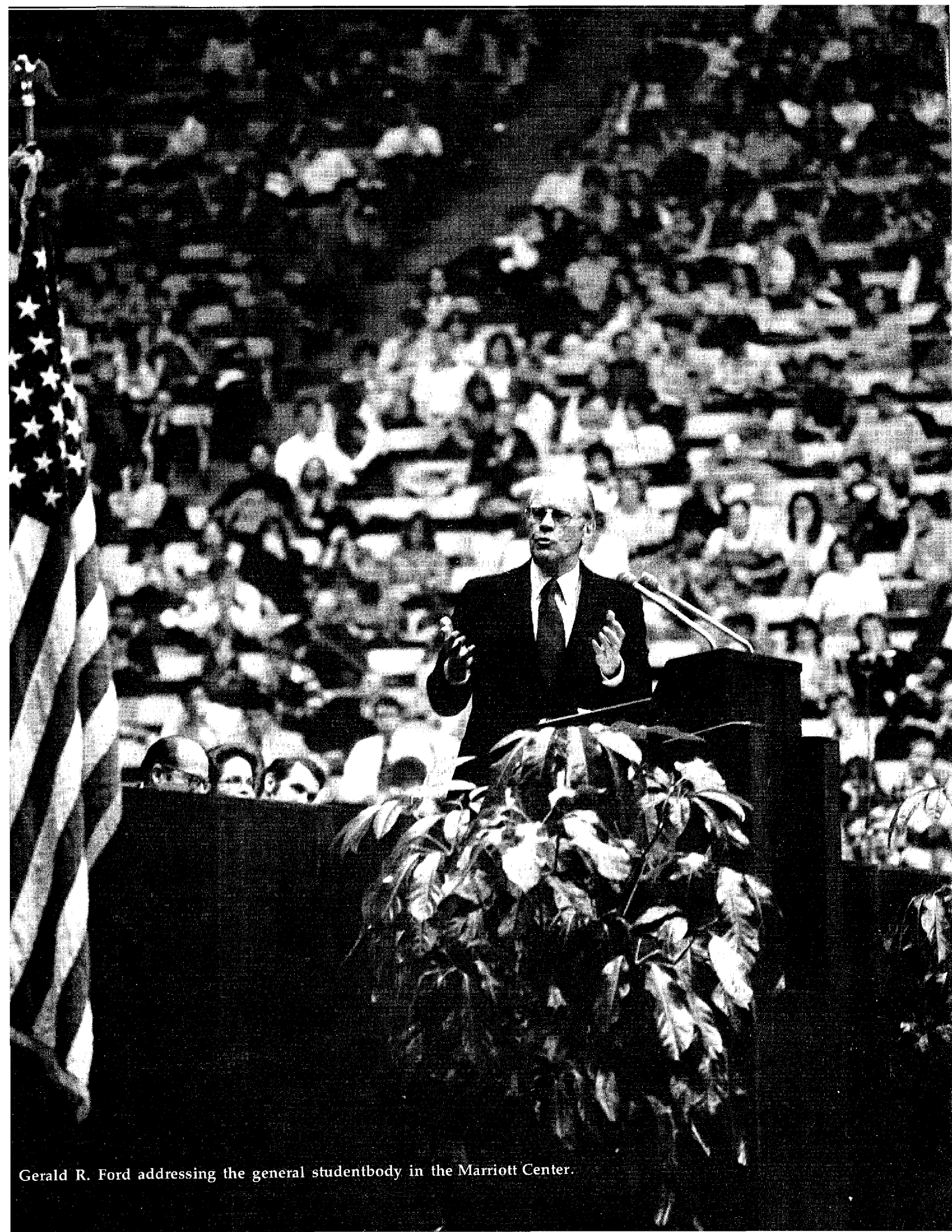
government, as I understand it, predicated on the constitution, is one of check and balances. Our forefathers came from an environment primarily where they had been oppressed, and when they established our country they decided that no part of our government, no individual, should have total authority, and therefore the system of checks and balances with the separation of powers was devised. Now if I might, I would like to talk of a particular aspect of that situation before we get into questions and answers.

In the days immediately after World War II, I think the country went through what has been pretty well described the imperial presidency. It was understandable. It was an outgrowth of World War II. President Truman came into office in a euphoric situation, then President Eisenhower, President Kennedy — it was easy for the presidency to assume greater responsibilities and have the public and the Congress more or less accept them. With the advent of the war in Vietnam, we have had a shift, and it is more evident now than at any time. I like to categorize the present situation as the Imperial Congress. We moved away from the Imperial Presidency to the Imperial Congress. I happen to think both are bad.

To talk about one aspect of that relationship, let me discuss the War Powers Act. Under the Constitution, as I understand it, the President is designated as Commander-in-Chief and head of the government. He has the authority to negotiate treaties and to submit them for the advice and consent of the Senate; he has the responsibility of appointing diplomats, emissaries. On the other hand, under the Constitution, the Congress has the sole authority to declare war; to raise and support the armies and the navy; to give advice and consent and ratification to treaties submitted by the president; and to have the same responsibility, vis-a-vis, a partise by the president.

**Aren't you proud of a Congress that says, "If we do nothing in a crisis then this has to happen?"**





Gerald R. Ford addressing the general studentbody in the Marriott Center.

## The Imperial Congress

Now these are fairly definitive responsibilities. In the period right after World War II we developed this Imperial Presidency. It wasn't until the advent of the worst aspects of the Vietnamese war that Congress began to encroach and undertake the erosion of the power of the White House. And it has accelerated in the last several years. Let me give you three examples that transpired while I was either in the Congress or while I was President.

Number 1. The limitations on the authority of the President (in Vietnam) to commit our forces or to undertake certain military operations. Traditionally the responsibility of the president.

Number 2. The effort made in 1974 by Senator Jackson and Congressman Bannock in what is called the Jackson-Bannock Act, to pass legislation in the United States in our Congress telling a foreign government what it could do as to the emmigration of Soviet Jews from the Soviet Union. Because in that trade act of 1974 there was written a provision, or it was understood that before the most favored nation clause to the Soviet Union could be implemented, they had to put in writing (they, the Soviet Union had to put in writing) that they would permit 55,000 Soviet Jews to leave the Soviet Union annually. Just to give you some background, for many, many years, there was virtually no emmigration by Soviet Jews. In 1973 it went up to about 20,000. In 1974 up to 35,000, and the effort was to make it 55,000. Now that, I think, was an encroachment on the perogatives of the White House and it just happens it was counter productive. When Congress passed it and made the demands, the Soviet Union immediately stopped the emmigration and in 1975 it went down to ten or 11,000 per year; 1976 about the same; and as I understand it, it is up to around 20,000 now. But Congressional intervention, as well meaning as it might have been, was totally counter-productive in this instance.

Number 3. Another case which I happen to think was far more serious was the embargo imposed in the Congress on the

**As telephone calls were made . . . we discovered . . . that one member of Congress had an unlisted number which his press secretary refused to divulge. After trying and failing to reach another . . . we were told . . . that the Congressmen did not need to be reached. . . . to reach a third member . . . our . . . telephone operators left a note on the Congressman's beach cottage door, 'Please call the White House.'**

sale and delivery of U.S. military hardware to Turkey. If you go back and refresh your memory, in July, 1974, the government of Greece undertook for the Greek Cypriot National Guard the



Moot Court Room

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## The Imperial Congress

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assassination of President Nykarios and the control of the government of Cyprus. The Turkish government responded, and responded with force and moved in with 40,000 Turkish troops, and in effect took over the Island of Cyprus and have held it ever since. The Turkish Cypriot population is roughly 18 percent of the island; they now occupy about 41 or 42 percent and it is a festering situation, which is not good.

But the Congress, in order (from their point of view) to get Turkey to withdraw the troops, imposed a statutory limitation on our Government to sell to Turkey military arms. Now the tragedy of it was (there were two aspects): 1) before the imposition of that legislation, Turkey had bought and paid for, and had in storage, ready for shipment, significant amounts of U.S. military hardware. The embargo went on and even that which they owned could not be shipped out of this country. Well, the question always came to mind, was the imposition of this arms embargo beneficial? Did it solve the Cyprus problem? The facts are, it was totally counterproductive. And because of Congressional intervention, the problem of Cyprus is still unresolved.

But the worst invasion, in my opinion, of Congressional action, was the passage of the War Powers Resolution in 1973. Understandably, because of the Vietnam War, the War Powers Act gradually worked its way through the Congress. What it sought to do was impose on the President, by law, the need for the President to consult with the Congress before he commits U.S. military forces, to keep them informed, and to make reports following the movement of U.S. forces out of the military situation. There are, of course, very specific provisions that allow the President to commit forces for up to 60 days. If Congress approves, of course, he can keep them there longer.

On the other hand, Congress, by a concurrent resolution, could require their withdrawal. The concurrent resolution is a parliamentary procedure by which the Congress avoids the threat of a presidential veto. A joint resolution, or a piece of legislation in ordinary course, the president can veto. But a concurrent resolution is non-vetoable. That is simply an act of Congress. So here Congress gives to itself the authority to withdraw U.S. troops without any concurrence or objection by a president.

And then the most objectionable feature, in my opinion, was that if nothing is done, if Congress does nothing in that 60-day period, the forces have to be withdrawn automatically. Aren't you proud of a Congress that says, "if we do nothing in a crisis, then this has to happen?" That is a forthright, strong position for 535 members of the Congress to take. Well, you can see I have strong feelings, and I had those feelings when I was in Congress, so I am not just expressing now a position of a former president. I think it is unconstitutional and I think it is impractical. Now let me tell you why I think it is impractical. In April of 1977 I had the privilege and the honor of making a speech at the inauguration of the John Sherman Cooper Foreign Policy Seminar at the University of Kentucky and I took the subject of the War Powers Act. I remember we had some very important data that I thought ought to be on the record. Data that took place while I was president. Let me quote from it because I want to be very precise. "When the evacuation of DaNang was forced upon us during the Congressional Easter recess, not one of the key bipartisan leaders of the Congress was

in Washington. Without mentioning names, here is where we found the leaders of Congress: two were in Mexico; three were in Greece; one was in the Middle East; one was in Europe; two were in the People's Republic of China. The rest we found in twelve widely scattered states of the Union.

This, one might say, is an unfair example since Congress was in recess. But it must be remembered that critical world events, especially military operations, seldom wait for the Congress to meet. In fact, most of what goes on in the world happens in the middle of the night, Washington, D.C. time.

On June 18, 1976, we began the first evacuation of American citizens from the civil war in Lebanon. The Congress was not in recess. It had adjourned for the day. As telephone calls were made (by my legislative liaison people) we discovered, among other things, that one member of Congress had an unlisted number which his press secretary refused to divulge. [laughter] After trying and failing to reach another member of Congress, we were told by his assistant that the Congressman did not need to be reached. We tried so hard to reach a third member of Congress that our resourceful White House tele-

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**It must be remembered that critical world events, especially military operations, seldom wait for the congress to meet. In fact, most of what goes on in the world happens in the middle of the night, Washington, D.C. time.**

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phone operators (and believe me, they are the best in the world) had the local police leave a note on the Congressman's beach cottage door 'Please call the White House.' " Well, the point that I make, and we have an equally specific categorical recitation of where we found members of Congress, when by a new law we were required in a series of steps to consult, to inform, etc. Now you can't do it. A president, as a practical matter, obviously, because he needs the cooperation and assistance of a Congress ought to go through a responsible modification consultation process. But to write it into law and to, in effect, say "if the president doesn't follow the letter of the law, he is impeachable" I think is not only impractical, but unconstitutional. And I think we have now moved almost to the ultimate of the imperial congressional activity. I believe we have got to have the pendulum swing back so that separation of powers and the system of checks and balances works the way it was intended without one branch of the government dominating the other.

Thank you.

## The Imperial Congress



"You can see I have strong feelings"

### Questions from the audience:

Q. You talked briefly about the Imperial Presidency and the Imperial Legislature. Do you see any prospect of an Imperial Judiciary?

A. I have seen no indications during my twenty-eight years and a few months in Washington. I know there were some who felt that the Warren Court had overreached, encroached, etc. But I don't think that is as evil as what I see happening in the relationship between the Congress and the President. The court tends to sway with less widely spread divergences. But when you see what I think has happened, an Imperial Presidency is just as bad as an Imperial Congress. Don't get me wrong, I lived through both and we ought to junk them both when we get into that situation.

Q. You spoke of the conflict between two branches of government. If there were a conflict to come to a head between Congress and the President, should the third branch of gov-

ernment, the Judiciary, settle the conflict? How do you think it should be handled?

A. Well, I think that under our system there are tools which have been and can be used by one branch or the other, whereby the disagreement can be brought to the judiciary. That is done frequently. The president, through the Attorney General, can challenge the constitutionality of a law passed by the Congress, or the Congress has on occasion initiated legal proceedings as to actions taken by the Executive Branch. So the Judicial Branch can, and I happen to think should, be the arbiter in those differences.

Q. What happens if the Congress claims congressional privilege and the president claims executive privilege?

A. Well, I can't tell you what the outcome would be, but I am sure there have been controversies as important as that on the desks of the Supreme Court and they have been resolved and as far as I can recollect from my studies of law, the issue seemed to have been accepted by the loser as well as by the

### Can you imagine, 535 generals? 100 in the Senate and 435 in the House?

winner. That is why our forefathers were so wise. They established that third branch, with that responsibility. Not that I have always agreed with every decision, but at least we accept their decisions as the law of the land.

Q. In the Mayaguez rescue was the War Powers Act of 1973 an obstacle?

A. No, because I didn't accept it as applicable. [laughter] As a matter of fact, during my presidency there were six instances where it could be argued, (I say, it could be argued) that the War Powers Resolution had some applicability: the evacuation of U.S. citizens and refugees from DaNang, Pnom Phen, Saigon, the Mayaguez and the two evacuations from Lebanon. Six of them. Now, I had good legal counsel [looks at Dean Lee]. I'm not saying that Dean Lee made the decisions. I wouldn't want to implicate him. But we had good legal advice that said in none of those cases was the War Powers Act applicable. But let me add this. Just because I wanted to show my good faith we carried out the provisions of the War Powers Resolution. But in every communication I made to the Congress, we were very categorical in saying that we did not feel the operations undertaken (the military operations) were covered by the War Powers Resolution. I think it would be very helpful, I think it would be extremely wise for somebody to institute a law suit. And I think it is possible from what I have listened to by several legal experts, to determine, whether the War Powers Resolution is constitutional. I happen to think it is not, and I know it's not practical. Can you imagine, 535 generals? One hundred in the Senate and 435 in the House? You couldn't even get the leadership to agree, not to go beyond the leadership, and go into the membership of the House and Senate as a whole. It just won't work when you get a big time problem.

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**Professor Calvin Woodard Presents:**

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# BLACKSTONE

## and their vi



Those who claim ignorance on the subject of Jurisprudence were enlightened recently by Professor Calvin Woodard's dual presentations on Sir William Blackstone and Jeremy Bentham. In two brief hour lectures in the Moot Court Room, Professor Woodward moved from Blackstone's Historical Jurisprudence view of law to the modern day Benthamite Instrumental view of law.

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### Sir William Blackstone

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Few are aware that the legendary Sir William Blackstone began teaching law at Oxford only after failing miserably as a practicing lawyer. In spite of this, Blackstone was the first to bring some semblance of order to the chaos of the unwritten English Common Law. He was also the first to teach law in a university. Prior to Blackstone, English Common Law could only be learned through an apprenticeship in the Inns of the Court. According to Prof. Woodard, English Common Law could be learned but not taught, and Blackstone attempted to pro-

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**Blackstone was the first person to bring some semblance of order to the chaos of the unwritten English Common Law.**

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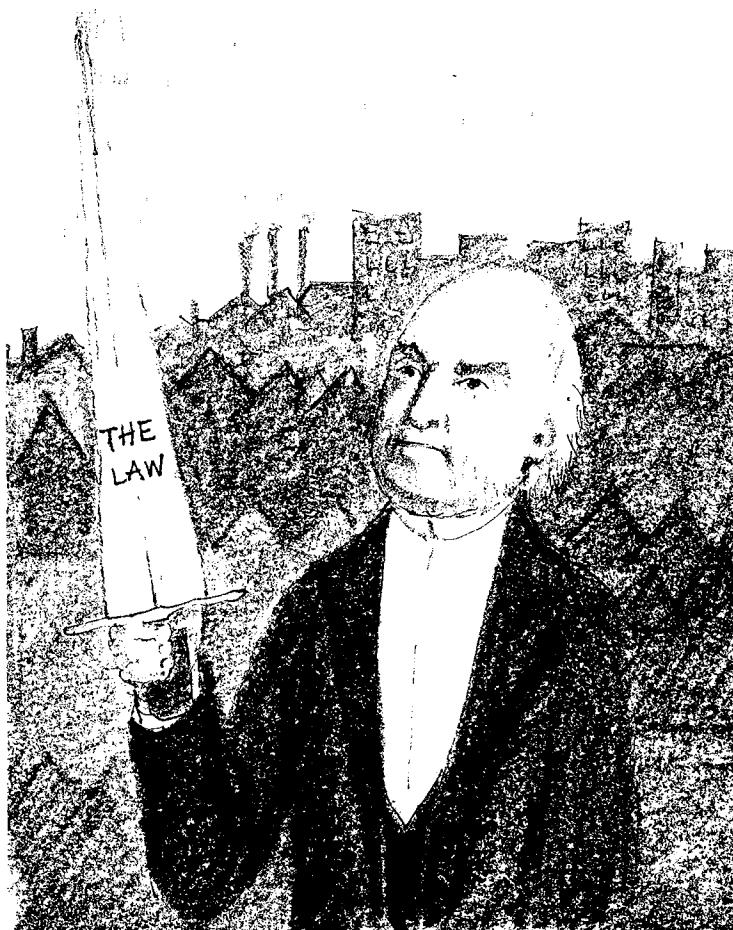
# & BENTHAM

## ews of the law

vide students with a "freshman survey course on English Law." His commentaries on the law, based on his lecture notes, were never intended to be a definitive statement of English Common Law, but only as a comprehensive treatment of the subject. They were assumed by many to be just that.

**Bentham described the unwritten English Common Law as "nonsense" and the idea of judges being the sole interpreters of this unwritten law as "nonsense on stilts."**

In his commentaries Blackstone classified the law into four categories. Law either protected rights or prohibited wrongs. Protected rights were classified as either rights of the person or the rights of things; while prohibited wrongs were classified as wrongs against a private person or wrongs against the State. Blackstone saw the nature of law as being two-fold. First, law was not made. Rather, it developed historically from the traditions and cultures of the people. Second, English Law was part of a hierarchy of laws. The ultimate law was God's law. Under that was Natural law, followed by the law of nations and then



Jeremy Bentham - Instrumental View of Law

## Blackstone and Bentham

municipal law. For harmony to exist all laws must conform to the highest law. If a law did not conform it was invalid. Judges had the sole authority to determine whether a law was in conformity with the higher laws, the presumption being that the law was valid. The individual was under this hierarchy of laws and therefore subject not only to the municipal laws, but to all higher laws.

Blackstone's influence on the American system of legal education was profound. First, he set the precedent for law to be taught in a University. Secondly, he separated substantive law from the entanglements of procedure and gave it a framework with finite limits. Finally, by publishing his commentaries he paved the way for legal scholars everywhere to write and expound on substantive law and its nature.

### Jeremy Bentham

While Blackstone was still teaching at Oxford, Jeremy Bentham entered the university at the age of 14. He was not a pupil of Blackstone for long because he disagreed strongly with Blackstone's interpretation of the law. Blackstone painted English Common Law as the grandest and noblest achievement of man. It was a beacon on the hill, unaf-

fectured by the whims of man. In contrast, Bentham described the unwritten English Common Law as "nonsense" and the idea of judges being the sole interpreters of this unwritten law as "nonsense on stilts." Bentham was not bound to the grand tradition of law as seen by Blackstone. He felt law should be built on reason, not tradition.

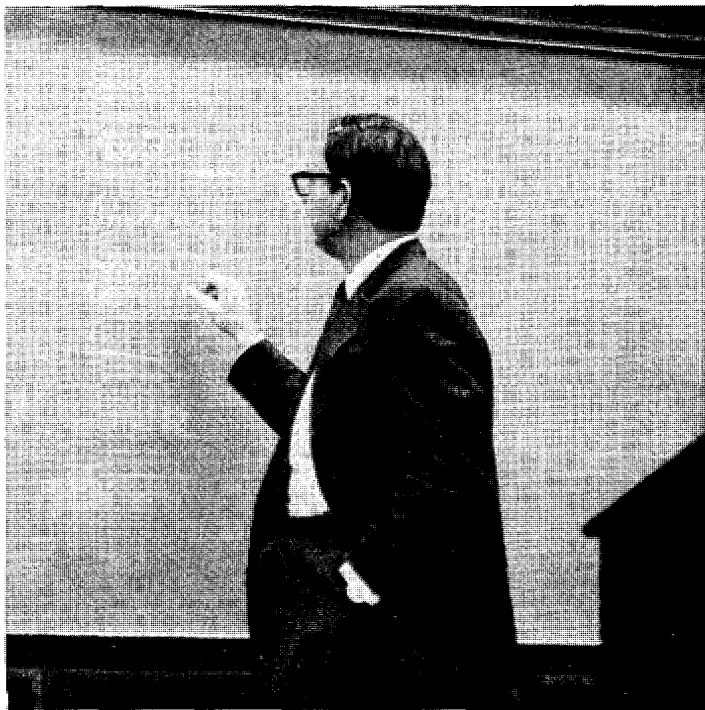
Bentham had his own view of law and its relationship to society. In Blackstone's hierarchy of laws, English Common Law was seen as part of a vertical pattern. Bentham, however, viewed law in a horizontal pattern as developed by his "bifurcated mode." The bifurcated mode was simply a methodology of reducing law into its essential components. Things called "the law" were either properly conceived as law or improperly conceived as law and therefore not true law. Law was either of God or of man. The law which is the providence of lawyers is "positive law," (enacted by legislatures) not the law of God.

Bentham viewed society in light of two principles. First, that the aim of society should be to achieve the greatest good for the greatest number of people. This is the fundamental principle of "utilitarianism" as conceived by Bentham. Second, men will seek pleasure and eschew pain. They will obey laws

which they conceive to be for their good and will avoid pain or punishment. Combining the utilitarian principle, the pleasure pain principle, with the notion of positive law lead Bentham to conclude that law was a lever — a tool, an instrument to control human behavior. Most of the reform acts of the 19th and 20th centuries were based on this instrumental notion.

Bentham had a great influence on the American legal system. This was magnified when combined with the trend towards secularization. Law schools today are seen as technical institutes. Lawyers are technicians, "hired guns" who have the necessary expertise to wield the instrument of law. That is not say that Bentham's instrumentalism has diminished Blackstone's influence in legal education. For those interested in further information of the historical development of legal education as we know it, see Prof. Calvin Woodward's Virginia Law Review article entitled "The Limits of Legal Realism: An Historical Perspective." 54 Va. L. Rev. 689 (1968).

Professor Calvin Woodward  
Director, University of Virginia Law School  
during his lecture at the J. Reuben Clark Law School



Professor Calvin Woodard

**Editor's Note:**

Professor Calvin Woodard, is currently director of the Graduate Program in Law, University of Virginia Law School. He received his B.A. from the University of North Carolina in 1950; his L.L.B. from Yale Law School in 1953; his Ph.D. from Cambridge University, England, in 1960. He practiced law for three years with the prominent Wall Street firm of Sullivan and Cromwell. He held a dual appointment in the History Department and Law School at Yale University for four years and has been a visiting professor at the University of Chicago, Stanford and Yale. His published articles include "Reality and Social Reform: The Transition from Laissez-faire to the Welfare State," 72 Yale L. Jr. 286 (1962); "The Limits of Legal Realism: an Historic Perspective," 54 Va. L. Rev. 689 (1968).

Prof. Woodward was brought here by his former student, Professor Steven Fuller, Associate Professor of Law, J. Reuben Clark Law School.



Summarized by Jill Olsen,  
Second year law student

## Co-curricular Programs

# New Boards Announced

**Editor's Note:**

The Co-curricular programs have selected the following people to serve in leadership positions for the coming school year:

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## Law Review Board of Editors

Editor-in-Chief:	William Holyoak	
Managing Editor:	Kent Collins	
Executive Editor:	Fred Vandever	
Article Editors:	Rob Clark	
	Val Christensen	
	Bruce Lemons	
Business Manager:	Gary Jubber	
Note & Comment Editors:	Bruce Babcock	Tony Quinn
	Bill Dupree	Rod Vessels
	Brad Morris	

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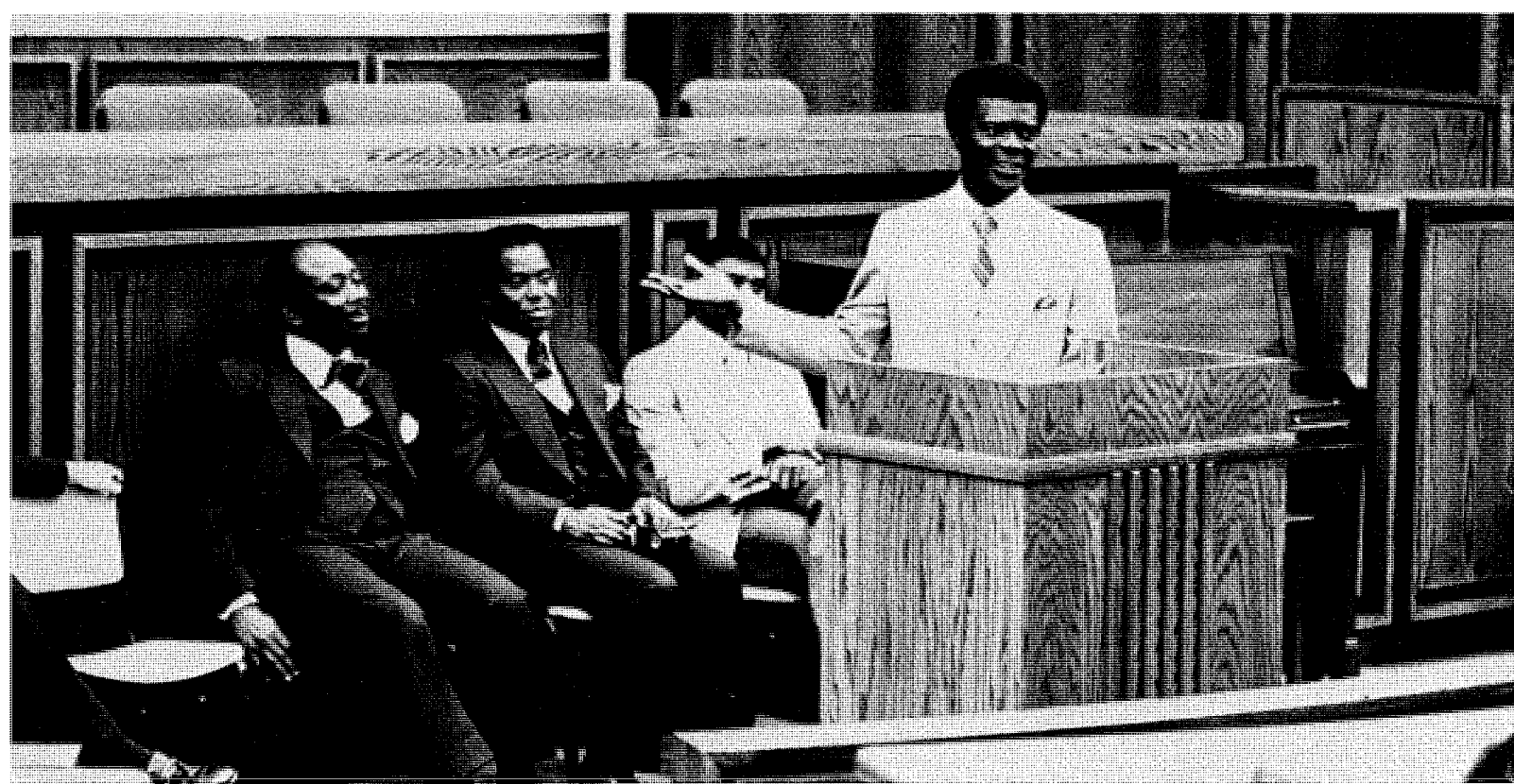
## Journal of Legal Studies Board of Editors

Editor-in-Chief	James Christensen	
Managing Editor:	Dale Bacigalupi	
Senior Editors:	Forrest Fountain	Denver Snuffer
	Greg Jensen	Scott Wolfley
	Richard Rife	
Technical Editor:	Chris Burdick	

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## Moot Court Board of Advocates

Chairman:	Vaughn A. Crawford
Associate Directors Appellate Division:	Daryl Lee
	Scott Quist
Director Trial Division:	Steven B. Andersen
Director First Year Program:	Ladell Hulet
Director of Editing:	Gay Taylor



# Ambassador from Ghana Addresses Law School

Dr. Alex Quaison-Sackey  
at J. Reuben Clark Law School

"We hope the future will bring a new period of stability and peace," said the Ghanaian ambassador to the United States on February 15, 1979, to a packed audience of law students in the Moot Court Room of the Law School. He was brought to Provo by the Law School and his subject was "Marriage and the Law in Ghana."

Dr. Alex Quaison-Sackey was the first black appointed to be president of the United Nations General Assembly. He is currently the ambassador to the United States from Ghana, a country which is making a "very peaceful" transition from a military government to a civilian government. The West African nation of 10 million people will trade its military government for a republic on July 1. Ghana has gone through a long string of alternate republics and military coups over the last 20 years, but over the last two years the government has taken many steps to return to civilian rule.

Among these steps was the appointment of a constitutional assembly which is "currently in the process of drawing up a constitution," said Dr. Quaison-Sackey. It will include "an executive American-type president, a bill of human rights . . . a parliament-type legislature, an independent judicial system." The assembly will present the finished constitution to the government April 16. Elections for the new government's

leaders will be held June 15. Quaison-Sackey denied a comment by a BYU law professor that he may be a candidate for Ghana's new presidential position.

In speaking of marriage customs in Ghana, Quaison-Sackey said "Marriage in Ghanaian society is not a simple matter of 'boy meets girl.' It is an important matter to the family, not just between a man and a woman but between the families of a man and a woman." Marriage laws in the country fall into three categories: customary law, Mohamedan law and statutory law which traces its origin to Britain. "A high premium is placed on chastity," he said. "A married woman cannot even be seen to flirt with a man besides her husband." Girls go through puberty rites at about age 12 and young boys spend several days in the forest living off the land to prove their manhood, Dr. Quaison-Sackey said.

Upon marriage, an elaborate rite is conducted to prove the bride's chastity. If she is unchaste, material compensation must be made to the groom. However, polygamy is "very common in Ghana, even today," said Quaison-Sackey. "It is still strong, not dead at all." Under the law, first wives have no more rights than the other ones. If a man marries a woman by statutory law he may not turn around and marry another woman under customary law. However, if his first marriage was by customary

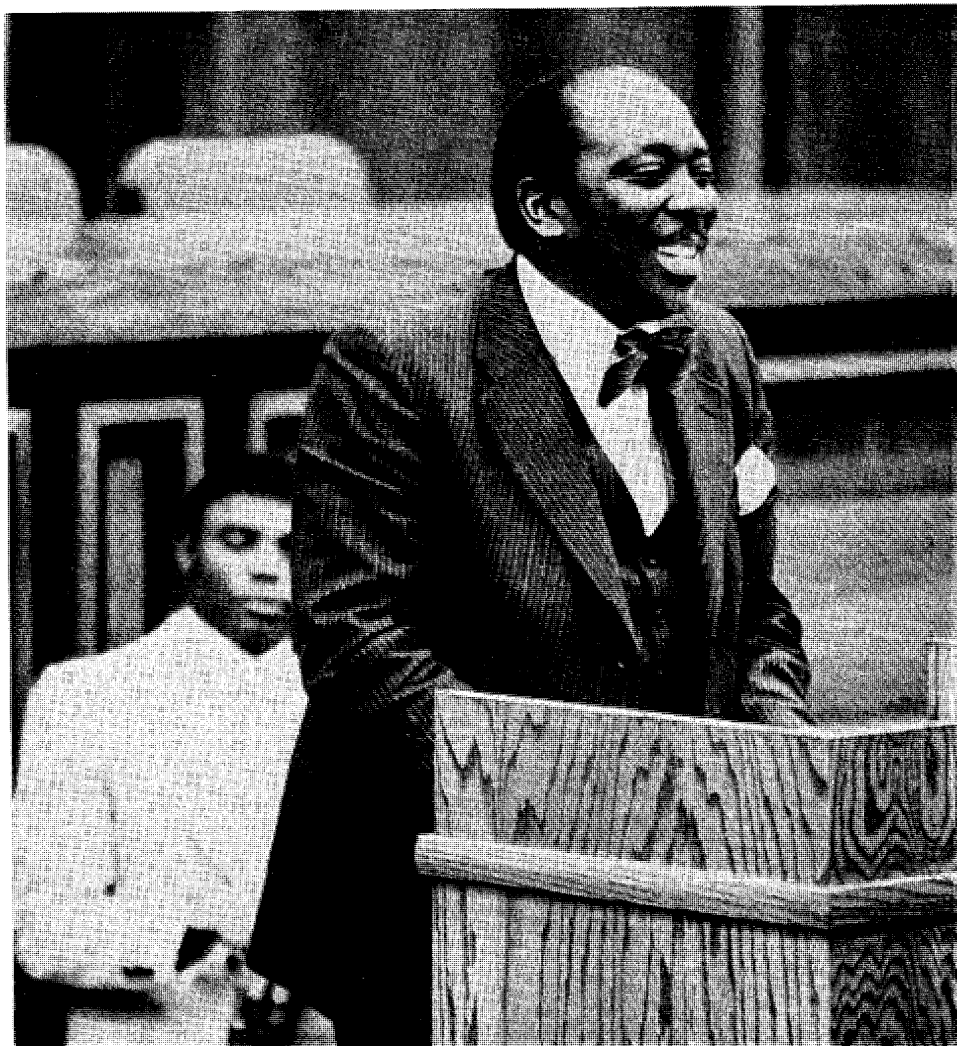
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**"We hope the future will bring a new period of stability and peace," said the Ghanaian ambassador to the United States on February 15, 1979, to a packed audience of law students in the Moot Court Room of the Law School.**

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law, he may marry again, even if he desires to marry under statutory law

When asked about the divorce rate in Ghana, Dr Quaison-Sackey said that in the rural areas it was very low, however in the large cities and towns where life had become westernized it was comparable to our own. In terms of the family size, most families in Ghana number from six to eight people, relatively high compared to the United States. As a personal anecdote, the ambassador commented in his thick British-Ghanaian accent, "I have six children. My secretary only has four, but then he is a young man."





# A mutually Beneficial Relationship

## The J. Reuben Clark Law Society

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The J. Reuben Clark Law Society was founded to "promote the general welfare of the J. Reuben Clark Law School and Brigham Young University" and to provide a continuing link from the Law School to its graduates after they enter into their careers. It is a mutually beneficial relationship.

All full time students at the Law School automatically become members of the student chapter of the J. Reuben Clark Law Society when they enter. Upon graduating, each student is entitled to a complimentary membership for one year. After that, minimum membership dues for the next three years are \$25, increasing to \$50 two years later and finally reaching \$100 the next year. Those who donate \$500 annually receive "Full Membership" and those who donate \$1000 annually are designated "President's Members."

Recently Dean Rex E. Lee commented on the Law Society: "We want our students to understand that their legal education is an ongoing process — one that

**We keep society members informed of what is happening in the Law School — changes in teachers, changes in programs. We are also initiating a Law Student directory to keep them informed of their classmate's activities. It will be broken down by classes, alphabetically, and geographically.**

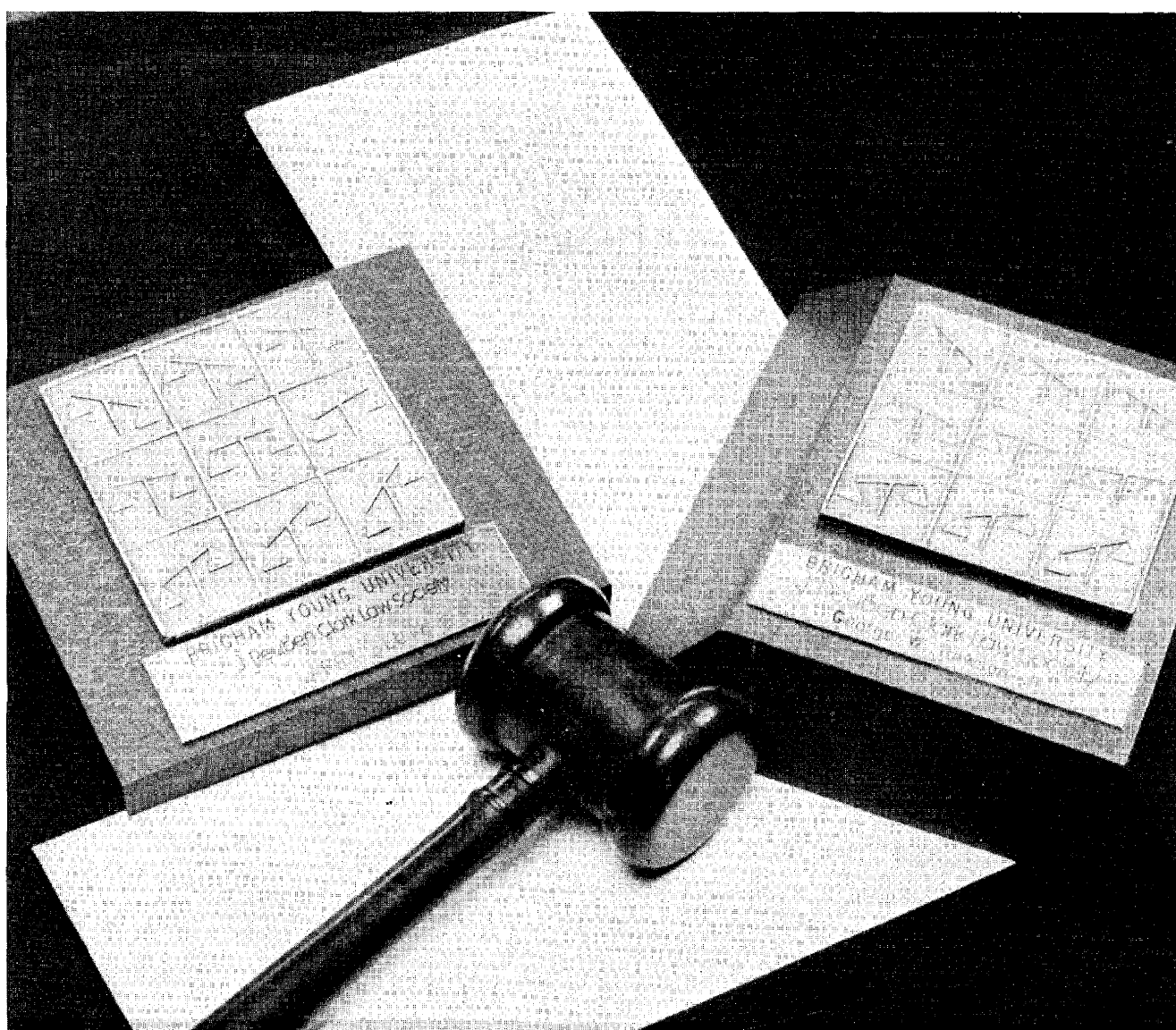
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doesn't end with graduation. We want them to understand that our interest in their welfare is a continuing one as well. For both these reasons, we try to keep in

close touch with them. We think it makes for a mutually beneficial relationship. They can help us by identifying good students, assisting with placement, and — yes — giving their financial support. We can help them by keeping them in the J. Reuben Clark Law School 'family' and by offering them the benefits that come from that unique association."

"We keep Society members informed of what is happening in the Law School — changes in teachers, changes in programs. We are also initiating a Law Student Directory to keep them informed of their classmates' activities. It will be broken down by classes, alphabetically, and geographically. Every Society member will receive a copy, and we will update it frequently. We also visit Society members personally, as time and resources permit. For example, during the past year, we have held Law School Dinners with Society members in all parts of the country."

Another important benefit of Society membership, according to Dean Lee is the opportunity to associate with estab-



lished attorneys who may or may not be graduates of the J. Reuben Clark Law School: "Bear in mind that the Society has provisions for admitting attorneys, judges, and other legal professionals who did not graduate from our institution. Consequently, membership is more than a matter of classmates merely associating with classmates — it is a matter of valuable professional associations and experiences that extend nationwide and involve some exceptional people."

Dean Lee feels the Society is succeeding. "There is a lot of pride and cohesion among our graduates. There are two reasons for this, I think: first, because we are a Church-related institution; and second, because we are a new institution. Both of these circumstances draw people together in a way that evokes special feel-

ings and builds exceptional relationships."

*Comments from two members of the Charter Class:*

"Being a member of the Charter Class of the Law School was unique and valuable because, as no other class that has followed, we had an extraordinary sense of community as classmates, and also as professional colleagues. Even away from that environment, I still feel rooted to those associates, to my professors and to the institution itself. My membership in the Law Society has allowed me to watch with pleasure the continued growth of that community we started six years ago." — Linda Gould ('76), Tax Manager, Arthur Andersen and Company, Washington, D.C.

"It seems to me that the Society will become increasingly important as time passes, because it will be an effective way for graduates to keep in touch with one another and with the School. Just yesterday, I received a copy of the Law School Directory for the past three years. It was informative — and fun — to look through it and get the latest news about my classmates."

— Scott Cameron ('76), Bachman, Clark, and Marsh, Salt Lake City, Utah.

For more information about the J. Reuben Clark Law Society, write or call Larry Bluth, Brigham Young University, 544 JRCB, Provo, Utah 84602 (801) 374-1211, Ext. 4125.

## National Moot Court Competition:

# BYU Team In Finals

The J. Reuben Clark Law School was well represented this year in the National Moot Court Competition. The Regional Competition was held in Denver last November. Two teams represented the Law School. The team of Jeff Dahl and Kevin Monson, with Rick Hymas on brief, placed second overall and advanced into the Finals. Third place went to the other BYU team of Jim Lund (who was named Best Oral Advocate in the Law School competition) and Myrna South, with Alan Bugg on brief. Both teams were undefeated orally and both teams tied for second place on brief.

The Finals were held in New York City, January 29-31. In the first round of competition Dahl, Monson and Hymas faced a highly ranked team from the University of Virginia, whom they defeated. They were then eliminated in the second round of competition. However, this was the first time that a BYU team has been able to reach the National Finals. As a result of these fine efforts, Brigham Young University was ranked in the top fifteen law schools of the National Moot Court Competition, the highest finish a BYU team has ever had.



# Second Year Competition

On February 17, the second year Moot Court Competition was held in conjunction with the Annual Board of Visitors Seminar. The two top second year Moot Court teams argued before the Honorable Oliver Seth, Chief Judge, U.S. 10th Circuit (presiding); the Honorable Edward D. Re, Chief Judge, U.S. Customs Court; the Honorable John C. Godbold, Judge, U.S. 5th Cir; the Honorable James Duke Cameron, Chief Justice of the Arizona Supreme Court;

Professor Martin D. Dickinson, Dean of the University of Kansas School of Law; and John B. Stohton, attorney from Monterey, California.

The Dean's Cup went to Randall Skanchy. Best brief was awarded to Darryl J. Lee. The championship team was composed of C. Lee Mumford and Randall Skanchy with Darryl J. Lee on brief. The honorable mention team was composed of Evan S. Hobbs, Terry C. Turner, with Jill Olsen on brief.



Randall Skanchy receives Dean's Cup.



The Judges, left to right: John B. Stohton, Attorney from Monterey; James Duke Cameron, Chief Justice of the Arizona Supreme Court; John C. Godbold, U.S. 5th Circuit; Oliver Seth, Chief Judge, U.S. 10th Circuit; Edward D. Re, Chief Judge, U.S. Customs Court; Martin D. Dickinson, Dean, University of Kansas School of Law.

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