

Fall 1991

Clark Memorandum: Fall 1991

J. Reuben Clark Law Society

J. Reuben Clark Law School

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CLARK

MEMORANDUM

FALL
1991

H Reese Hansen
Dean

Scott W Cameron
Editor

Charles D Cranney
Associate Editor

Ronald Sasine
Assistant Editor

Linda A Sullivan
Art Director

John Snyder
Photographer

Joyce Janetski
Assistant Copy Editor

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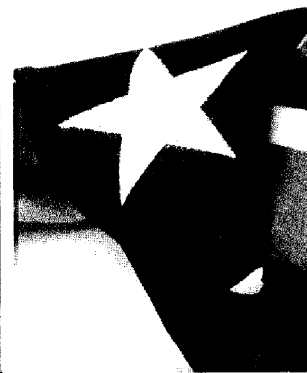
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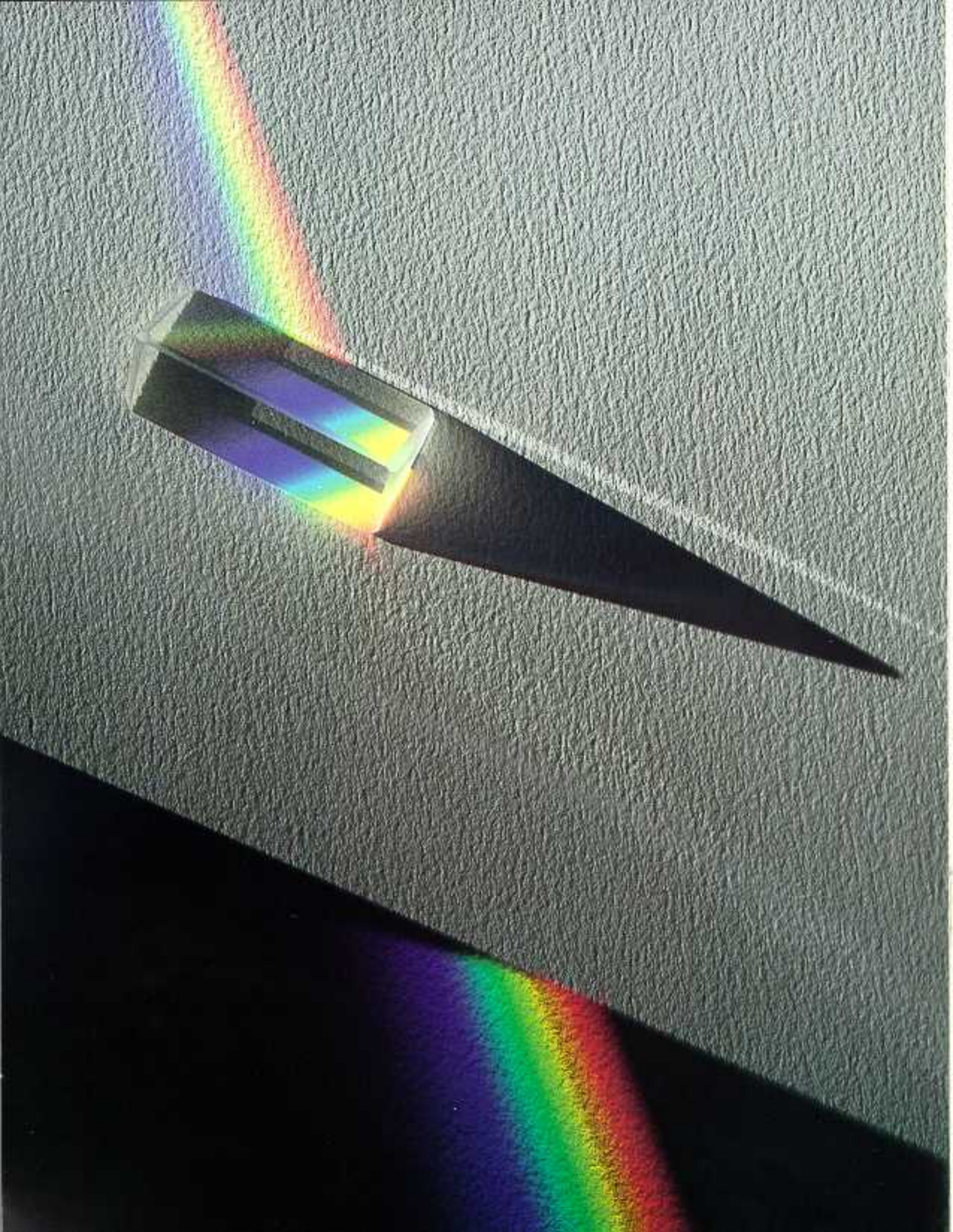
FALL 1991

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V a r i e d

Creating Harmony from Our Differences

R O N A L D S A S I N E

A

s it strives to capture
and reflect the intri-
cacies of modern
American society, the
study of law must
necessarily grapple

with the disparate histories and experiences of our immigrant nation. Similarly, growing cross-border interaction has created new demands for international and multicultural legal skills. The J. Reuben Clark Law School, with its Faculty and Student Diversity committees, seeks to provide a legal education grounded in understanding and accepting the differences that surround each of us and their effects on the formation, enforcement, and practice of law. Recent events highlight the Law School's goal: the initiation of an

■ P H O T O G R A P H Y B Y J O H N S N Y D E R

I hear America singing, the varied carols I hear.

—WALT WHITMAN

C a r o l s

exchange with Howard University Law School, a historically black college in Washington, D.C.; the creation of a Master of Comparative Law Program and its rapid acceptance and growth; and the inauguration of a Celebration of Diversity, an event dedicated to discovering the unique perspectives brought to the Law School community by its members

Accepting differences in others can be difficult; often it is easier to use them as a barrier than as an opening. But those who strive to understand the uniqueness and contribution of each individual are better able to remove the restraints that can otherwise prevent them from fulfilling their role for their clients, their constituents, or the law itself. As students, faculty, and administrators of the Law School work to better understand the nation's social fabric, they come to better understand the law based on it.

Wherever we may be and whatever we may do, differences form the historical foundation we act on. Even as the revolutionaries plotted succession from the crown in Philadelphia, Father Escalante surveyed Utah Valley and sent word to the viceroy in Mexico City. While most of the American frontier was still an educational wasteland, Warren Dusenberry petitioned Brigham Young for a grant to begin a local school in Provo. Viewed in context, it becomes clear that the sum contribution of individuals, whether small or great, has been our nation's most important shaping force. It is with the intent of understanding better these contributions that the Law School moves forward embracing diversity.

THE HOWARD UNIVERSITY EXCHANGE

In the aftermath of the Civil War, the pressing need for educational opportunities among the freed slaves was nowhere more apparent than in the District of Columbia. One-third of the district's citizens were African-Americans, making the urban black population in Washington the world's largest. Elementary schools were established almost immediately by various philanthropic organizations, but access to higher levels of education remained elusive. Clearly, avenues of higher education for members of the black community would need to be opened to train future leaders and teachers.

In 1867 a charter was granted by the U.S. Congress to the trustees of Howard University. Within two months of its incorporation, five students began classes in Howard's preparatory and normal schools. Under the guidance of the Bureau of Refugees, Freedmen, and Abandoned Lands, the university began to grow and develop, and enrollment in the university's four departments reached 172 in 1869, with

"twenty-one promising young men" taking courses in the law school alone. By 1872 the student body stood at 567.

The superintendent of schools for the Freedmen's Bureau reported in 1869: "Howard University is in, but does not belong to, my department; this is a central institution, founded on a broad basis, and when in full operation [will] be an ornament and honor to this national capital." Howard's continued excellence and distinguished alumni, faculty, and students attest to the superintendent's foresight.

The prospects for an academic exchange between Howard



**Kristine Keala Meredith
shares her
Howard University
exchange
experiences at the
Law School's
Celebration of Diversity.**

University and the J. Reuben Clark Law School arose out of a conversation between Howard Law School's Dean Clay Smith and Dean J. Clifton Fleming. While visiting Washington, Fleming met with Smith to discuss business of the Board of Visitors. Dean Fleming suggested the idea of an exchange, and both men agreed to discuss the possibilities with their respective administrations. Soon a program was under consideration, and a faculty member was needed to initiate the exchange.

Professor Lynn Wardle spent the 1989-90 academic year working at the Department of Justice in Washington, D.C. Before leaving for Washington, Wardle was informed of the efforts underway to establish the program with Howard. He began to grow interested in being the first exchange professor, and he expressed his desire to both administrations. Although the administrative details took quite a long time, both schools supported his efforts. According to Wardle, "the administration at Howard was very positive, especially Interim Dean Alice Gresham Bullock."

It was decided that Wardle would teach at Howard for both semesters of the 1990-91 school year, as an exchange professor in fall and as a visiting professor in winter. The Howard faculty warmly welcomed him and included him in all of the regular faculty meetings and activities. Several special events stand out as highlights. Virginia Governor L. Douglas Wilder, a graduate of Howard Law School and the first elected black state governor in U.S. history, was honored by the law school for his accomplishments and his contributions to African-American political life. The class of 1991 honored another Howard graduate, U.S. Supreme Court Justice Thurgood Marshall, with a commissioned bust placed in the law library. "The unveiling ceremony was a very moving occasion," according to Wardle. "Justice Marshall, as well as five of his Supreme Court colleagues attended; that's more

Supreme Court justices in the same place at the same time than I have ever seen outside the Court itself."

Professor Wardle kept very busy with his teaching and writing while at Howard. He taught courses in Family Law and Conflict of Laws during fall semester and an additional section of Conflict of Laws in the winter. He addressed a faculty forum, and the international students in the master of comparative jurisprudence program asked him to speak to their group as well. Wardle was also able to conduct research at the Howard law library, the American University, and the Library of Congress, and during his tenure at Howard he published two pieces, an article in the *Brigham Young University Law Review* and a chapter in a forthcoming book on international family law issues. He was even asked to help judge the school's moot court competition.

Despite the superficial differences that may exist between the Howard University Law School and the J. Reuben Clark Law School, "no two schools are more similar," Wardle argues. "Both law schools are identified with strong subcultures and possess a clear vision of their unique identity. As a result, both schools have had to deal with internal and external disputes over their mission and ideals." Because of the schools' strong identification with a narrow sector of society, lack of understanding can be a problem for the institutions, and both are seeking to respond positively to the challenges of diversity.

At the 1990 meetings of the Law School Board of Visitors, there was interest in expanding the exchange program to include students. Kristine Keala Meredith, an officer in the Minority Law Students Association and a member of the Student Diversity Committee, attended a roundtable discussion where diversity was addressed. The prospect of exchanging law faculty with Howard was discussed by several members of the board, including Howard Dean Clay Smith, and one of the members of the board suggested including students in the program. Kristine immediately began considering the possibilities and explored the idea with other Law School students, faculty, and administrators. She envisioned a program that would allow students to experience the diversity of studying at Howard, gain a new perspective on law from its legal professors and scholars, and associate with its African-American students.

Kristine was encouraged by Professor Wardle's plans to visit Howard. She presented a proposal to Dean Hansen requesting the Law School initiate contact with Howard to suggest a student exchange, and although personal affairs and increased expenses presented her with difficult obstacles, Kristine was determined to carry out her program, though final approval came only two weeks before the start of classes.

While Kristine's Asian/Pacific Islander background sets her apart at the Law School, at Howard she was considered "just white" by some students. "Early in my residency at Howard I realized that the Howard students were surprised by the presence of a female, apparently white, third-year student from Brigham Young University." In response to more antagonistic students who doubted her motives for attending Howard, Kristine explained her intentions and commitment

to educational diversity. "I wanted to learn from black professors; I wanted to study with black students. I wanted a broader legal education and a broader view of the world."

Like any group with shared similarities, at times the Howard community presented Kristine with difficulties. Howard administrators warned her that stereotypes and racism did exist at Howard and that she would not be exempt from their effects. Although isolated instances occurred, Kristine found most of the students pleasant. She highly values the increased experience she gained within the black community, and she most enjoyed those classes that gave her a chance to share in the thoughts and values of her African-American classmates.

Both Kristine and Professor Wardle participated in the meetings of the Howard Christian Fellowship Organization. Their participation offered the chance to associate with others there in a religious setting while affirming their own beliefs and testimonies. "I knew that many students had never had contact with Mormons and that they were curious about my beliefs and standards," says Kristine. "At the first meeting I felt I was a source of antagonism. I was troubled and wondered if I were really welcome. But as we prayed together, I felt that I was where I needed to be." For both Kristine and Professor Wardle, the group meetings became a source of support and strength during their stay. As time progressed, they were more openly accepted and developed a feeling of unity and friendship with the other members.

Kristine and Professor Wardle have high hopes for the future of the exchange. Wardle knows of several Howard professors interested in participating, and he expects at least one to come within the next two years. In addition, many more students applied for the exchange this year than last, an indication of growing interest in this innovative program.

"Howard and BYU need to stand together," according to Wardle. "As society becomes more centrifugal—with small and large groups spinning away from each other—pressures for isolation, separation, and antagonism increase, and the chance for conflict between subcultures intensifies. The experience and goodwill created by the exchange program can reduce these pressures as we look beyond the apparent to the real and find common ground."

FORGING FRIENDSHIPS:

THE MASTER OF COMPARATIVE LAW PROGRAM

Christine F. Byrd

The phenomenal growth in international transactions has greatly increased the need for lawyers trained to handle them. American lawyers working abroad are often required to understand and apply legal requirements of both their home and host countries. For both American and foreign firms and organizations, foreign lawyers who have been trained in American law are a great asset in deciphering what can often be a linguistic and semantic tangle.

As Church legal counsel in Europe, Professor James H. Backman often worked with European lawyers who held comparative law degrees to resolve difficult situations. "These

graduates enjoyed a distinct advantage," according to Backman. "Their knowledge of American laws made negotiations smoother and more economical." He returned to BYU in 1984 convinced that a master of comparative law program would be a natural addition to the Law School. He was supported by the findings of the American Bar Association inspection team, which was impressed by the number of BYU law students who spoke foreign languages and had lived abroad. "The members of the ABA team thought BYU was in a better position to offer an MCL program than any other school in the United States, and they were surprised it took us so long to get the idea."

Since it began in 1988, the program has matriculated students from Cameroon, Haiti, Japan, Peru, Canada, and the

cies and orphanages. While at BYU to research international adoption procedures, she visited a local law firm with other students and met a Provo attorney with clients interested in adopting children from Peru. As they became better acquainted, they discussed the possibilities of working together. She explored the problem further and eventually invited a friend, a practicing attorney in Peru, to meet with the Utah attorney. Together the two lawyers set up a program where Americans can visit Peru, arrange an adoption, complete the paper work, and then return to the United States, where the adoption becomes final. Upon completing her studies, Vicuna-Rios went to St. Louis, where she hoped to gain a position in an adoption agency that places Peruvian children.



**Master of
comparative law
students visit
various legal
services offices
as part of
their training.**

People's Republic of China. "We limit enrollment to no more than eight students per year," according to Backman. "This way we can ensure that participants receive the individual attention this new educational experience requires."

The MCL program is designed specifically for foreign lawyers who have earned a law degree or its equivalent in their own country and who wish to become more familiar with the American legal system. Despite language barriers, these well-prepared students have some advantages over ordinary J.D. students. They are generally older, and many have had considerable legal experience before coming to BYU. To earn an MCL degree, each student must complete 24 credit hours. Candidates can choose from any of the courses offered at the Law School, and they must complete two prerequisites. One of these courses is Introduction to American Law, offered only to them, in which they visit various law firms, court offices, legal services, and other government offices. "They find these field trips most interesting, especially divorce court," says Professor Backman. "They gain a first-hand exposure to the American legal system, visiting with and questioning various attorneys and court officials."

One MCL student, Martha Vicuna-Rios, particularly benefitted from this experience. A Peruvian native, Vicuna-Rios had worked with a law firm dealing with adoption agen-

Professor Stephen Wood took over from Professor Backman as coordinator of the MCL program in fall 1991, and he emphasizes its pragmatic objectives: "We need to give these students a positive experience while helping them understand American law. This way, when they return to their native countries they will have accurate perceptions of the American legal system." Professor Wood hopes the program will produce personal relationships that will provide beneficial foreign contacts for BYU students.

Professor Wood cites other reciprocal advantages of the MCL program. "Most law students are egocentric. Having foreign students in their classroom opens up possibilities they don't usually see." When a question was recently raised in a contracts class, the solution was unanimous and obvious to everyone, except a Chinese MCL student. He produced an answer that was for him equally obvious but conflicted with the first answer. "What students are discovering," says Professor Wood, "is that although legal systems have problems in common, the resolutions can be different."

Professor Wood discovered exactly how different legal approaches can be while working closely with Chong Liu, a Chinese MCL student and graduate of Beijing University, on a translation of the Chinese Administrative Procedure Law that was included in an article they published together.

"Chong translated the law literally and then we worked together to make the translation meaningful," says Professor Wood. "We went through the translation laboriously, sometimes taking as much as fifteen minutes to discuss one sentence, what it meant, and how the Chinese legal system worked to produce that one sentence. Because of the process, I gained an appreciation for the Chinese legal system I never had before. And it was mutually rewarding; Chong gained greater understanding of the American system."

The MCL program has produced other unique opportunities for the law faculty. Last May, Weidong Wang, a recent MCL graduate, invited Professor Backman and President Lee to participate on a prestigious advisory committee that will aid the translation of many American law cases into Chinese. Wang's monumental enterprise, a projected five volumes, has received backing from the vice president of the Chinese Supreme Court.

An MCL student with a particularly unique view of the world is Alexander Paul, a Haitian diplomat who has served at the United Nations, in the Bahamas, in London, and in Florida. He credits his experiences at the U.N. with enlarging his appreciation for diversity. "You cannot find two similar flowers or trees," he says. "If we look around us we all will see diversity everywhere; problems arise in our attitudes toward the differences."

While working at the U.N., Paul began studying at St. John's University for a master's degree in government and politics. His studies were interrupted by an opportunity to serve as consul general in the Bahamas, where he and his wife joined the Church.

Paul became interested in studying American law following his diplomatic tour in London, and he wanted to come to BYU. (At their wedding, Paul's wife, Helen, had vowed to love, honor, and follow him to the ends of the earth—never considering she and their four children might end up in Provo, Utah!)

Paul has a deep respect for American courts, "where judges can perform their duties with authority." According to Paul, the situation in Haiti is quite different. "When the Ministry of Justice can fire judges, it is difficult for them to be independent."

Paul sees many other differences between the American legal system and that of his country, the biggest of which is the Constitution. Paul admires the American Constitution as a solid monument that guarantees individual rights. In Haiti, where the political situation has been highly unstable, the constitution changes to ensure the rights of those in power. "In my lifetime, I have seen five constitutions," says Paul. "That is why I am still studying. Someone, sometime, must tell my people that if we keep changing the constitution, we will never get democracy."

After his studies, Paul plans to return to Haiti and enter private practice, working with American corporations there. "Knowing American law and the law in Haiti will put me in a better position to advise my clients and make them understand what is possible and what is not."

Improved international understanding can help reduce tensions. But according to Professor Wood, "it requires good-

will and a great deal of patience. No matter how sincere our intentions, each of us brings to the process cultural baggage that colors how we react, what we say, and what we hear."

Professor Wood says the MCL program has produced some surprises. When the program started, it was anticipated that many of the students would come from Western Europe, Canada, and Japan. To date there have been no participants from Western Europe, but each year the program includes at least one student from the People's Republic of China.

Another surprise is that some students enjoy their experience here so much that they stay on to get a J.D. degree from BYU or another American law school. This is especially true of the Chinese students like Chong Liu and Weidong Wang. "They are young enough," says Professor Backman, "to wait until the political situation settles down in their country; then they can go home and make a difference."

A CELEBRATION OF DIVERSITY

*If the whole body were an eye, where were the hearing?
If the whole body were hearing, where were the smelling?*

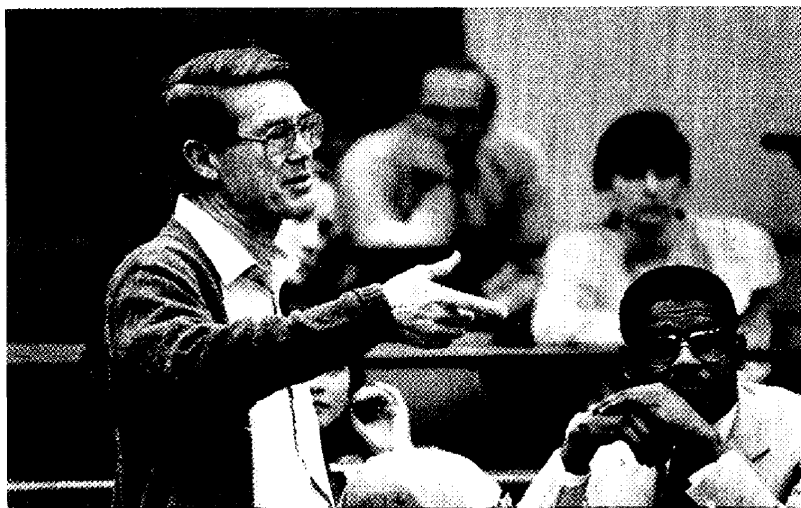
*But now hath God set the members every one of them
in the body, as it hath pleased him*

But now are they many members, yet but one body
—I Corinthians 12: 17–18, 20

Paul's injunction is as pertinent today for the J. Reuben Clark Law School as it was for the early saints of Corinth. Embracing diversity requires understanding, accepting, and celebrating the differences that surround us. It is a recognition that each individual plays a role and brings unique abilities and valuable experiences to the whole.

Diversity does not come naturally to the Law School. Located in a small community and sponsored by The Church of Jesus Christ of Latter-day Saints, from its creation the Law School has attracted primarily white, Mormon men. Although the backgrounds and experiences of these majority students are varied and wide ranging, an image of conformity has long accompanied the Law School in the eyes of outside observers. Increased awareness of the differences that exist among students and faculty, minority and majority, enriches the educational atmosphere and fosters greater understanding of the cosmopolitan world many students will find themselves in after graduation.

With the goal of establishing a framework where multicultural differences could be more openly considered and discussed, the Law School Diversity Committee was formed in the fall of 1989. The committee members wrestled with defining their objectives, often wondering exactly what diversity should mean and how it should be promoted. They hoped to sensitize members of the Law School community to appreciate the values and experiences of others. Associate Dean Constance Lundberg, committee co-chair, described the committee's objective as a challenge to promote respect for others' perspectives without drawing lines, building walls, or



**Celebration of
Diversity provided
a richness
of perspective
to faculty
and students.**

reducing communication. "Different backgrounds bring a richness of perspective," according to Dean Lundberg "What we are doing—valuing individuals—is unique; it requires both self-knowledge and appreciation of others "

By the fall of 1990, many members of the committee began to look forward to a more active outreach to the rest of the Law School. It seemed as though great progress was being made within their small group, but truly harnessing the value of the different perspectives present at the Law School required a broader effort. This desire prompted the planning of a Celebration of Diversity, an event to "learn all that we can from each other, harnessing the value of different perspectives and emphasizing diversity in its full meaning," said Associate Professor David Dominguez.

According to Professor Dominguez, ideologues in American society often argue for less than full meanings of diversity, with extremists dominating the dialogue and inflammatory labels being used by all sides. Under these circumstances, diversity has become a politically charged issue, with often unwarranted attention paid to vitriol and rhetoric. Balance is the key to full diversity, which requires collaboration and consensus. The committee hoped to organize an event where members of the Law School community would be encouraged to transcend the barriers that otherwise hinder the discussion of disparate perceptions, discovering within themselves and others the fruits of diversity.

A Celebration of Diversity was designed to highlight the positive nature of the differences that surround the Law School. According to Professor Ed Kimball, the committee

hoped that "the festive atmosphere would emphasize the benefits of diversity rather than address it as some unwanted duty." As a result, events were scheduled to highlight the ways human diversity makes life more interesting and exciting and to explore the richness in others. An elaborate food sampling table featured international foods prepared by law students and faculty, including Greek, Chinese, Mexican, and

Italian. At a meeting held in the Moot Court Room, participants shared with each other their own backgrounds and experiences with diversity. In addition, Kristine Keala Meredith spoke to the group about her semester at Howard University, and Alexander Paul shared insights into human interaction gained through his diplomatic experiences.

Perhaps the most revelatory part of the day-long event was the public display of *Building on Diversity: A Perspective on Our Roots*. The display was composed of individual, voluntary contributions addressing the life experiences and personal views of students, faculty, and administrators. The submissions included autobiographical sketches, poetry, artwork, and other expressions of creativity and individuality. They were posted on a large bulletin board outside the Moot Court Room where the entire Law School community could view them. These works were thoughtful, probing approaches to the diverse backgrounds of the participants and generated discussion and reflection from those who viewed them.

The idea for the display grew out of the committee's desire to highlight the differences among individuals within the Law School. A newsletter format was rejected because it would have placed too much editorial control in the hands of a few

who would be forced to evaluate the submissions. By choosing a "free-commentary" format for the display, people were free to contribute whatever they chose to contribute, without fear of interference or rejection. The format also seemed to heighten the interest of the readers, who were free to read about and discuss the wide range of topics and issues treated by the contributors.

The type of sincere analysis of differences put forward by the Diversity Committee serves both important pedagogical and professional purposes. Professor Kimball points first to the gospel principle of tolerance, which embodies the acceptance of the many irrelevant differences that tend to divide people. Understanding that divisions hinder greater understanding of our roles as brothers and sisters is the first step to surpassing those divisions. Associate Dean Lundberg argues that "the fundamental gospel principles of love, kindness, charity, and brotherhood should rule in this Law School—not externally imposed values." As attention is given to the higher law of "love thy neighbor," superficial obstacles placed between neighbors wither.

Diversity is important to the study of law for additional, more earthly reasons. Through interchange with people of different backgrounds, the experiential base of all the participants is expanded. If the law is to be understood as a response to human needs, exposure to a wider cross-section of human experience increases our ability to grasp its foundations and practical applications. The law student confronted by these issues while in the academic arena has an advantage over the

lawyer who deals with them only after beginning practice. Although some sectors of society may have been underrepresented in the past, the world has changed sufficiently to require greater participation. These newer voices have begun to join the chorus, and they must be welcomed by those already singing.

Professional considerations also highlight the value of exploring diversity. "Lawyers benefit from knowing everything they can that relates to their clientele," according to Professor Kimball. "A greater knowledge of peoples and their problems will help job performance" throughout the legal profession. Associate Dean and Director of Career Services Kathy Pullins points out that deepened understanding comes from the reciprocal exchange of experiences among students. "At the end of three years, students must learn to represent a wide range of clients. If students don't have the chance to broaden their base of experience, they are less able to apply the law to nontraditional circumstances."

A Celebration of Diversity began a process of serious reflection and consideration on the uniqueness and individuality that all bring to the table. Discovering diversity without fueling divisiveness can be a challenge, but the needs of the law and of modern society require this type of introspection and analysis. The value of diversity is slowly being added to the traditional legal concepts of ethics, duty to the bar, and pro bono service, and it will continue to play an important role in the way the law is taught, studied, and practiced for years to come.

As part of the Celebration of Diversity, faculty and students wishing to express their feelings about diversity made contributions, sharing their experiences through poetry, prose, and photography. The Clark Memorandum is pleased to include several excerpts.

EXPOSING THE HEART

Edward L. Kimball

In my teens I read Somerset Maugham's *Of Human Bondage*. His description of the feelings of a handicapped young man rang true to me. I told my mother, "Maugham explains the way I feel," so she read the book and said, "Surely you don't feel *that* way!" But I did. My bout with polio as I was turning three left both physical and psychic marks. Nine scars from childhood operations total nearly four feet in length. The psychic scars don't show, but they are nonetheless real.

In the exchange with my mother I became aware that the person who, of all the world, knew me best did not know all my feelings. We think we know one another, yet unless there is willingness to expose the heart there cannot be a fullness of understanding. Some people are so transparent that they seem to have their thoughts displayed on their forehead, like the stock market quotations running across a screen. I like such open people, without pretense; my wife is one of them. I'm not like that. I sometimes hide behind a screen, unable to accept the vulnerability that comes with openness.

I experience continuing tension between trying to ignore my physical handicap and acknowledging it. I don't want to admit that I am significantly different from others, but I also know I cannot compete in all the same ways. I probably have compensated by shifting efforts from what I cannot do to things I can. I can't run or jump, but I used to be good at table tennis, where I did not have to move far or fast. I liked canoeing, arm wrestling, and other activities that took upper body strength. I could not dance, but I could sing.

I might have liked benefits sometimes offered to the handicapped, but I was too proud to admit the need. A handicapped parking sticker? Not me. I have been more than vaguely annoyed at other handicapped people. Far from having special empathy, I wanted to be distinguished from them, not identified with them.

The most disabling consequence of my handicap is very real shyness. Meeting new people is one of the most difficult tasks for me. You would think that, after 35 years of teaching,

a new semester would pose no problems, but the first few classes of a new semester always produce a high level of anxiety, not from the subject matter, but from confronting a new group of students.

Over a lifetime I have learned to greet and talk with people pleasantly enough, engaging in chatter with strangers. But it is rarely with pleasure, nearly always with inward resistance. A cocktail-type party is the worst of times, where one flits from one stranger to another, making small talk.

In a conversation I am almost always the questioner. Do I take the initiative to protect myself somehow? Do I feel I have little to offer, so I draw others out?

At the intellectual level I know that I am an acceptable person, but at the feeling level there is a persistent sense of inadequacy. When I stop to think about it, I realize that nearly everyone has some sense of inadequacy and that my

physical handicap may be among the least important of problems I might have and that I have strengths to compensate for some of my weaknesses. But that realization still does not make the feelings go away.

Since I ordinarily do not see myself walking and since walking is *not* painful, I can sometimes almost forget my handicap. Then when I see myself in a mirror, walking, I am shocked at the terrible awkward gait. I hate it; I am angered by it. Are not other people offended every minute by what they see?

Perhaps I am guilty of overdramatization. I have so much. Why dwell on the little I lack? Physical strength is of small importance overall. Yet it is this one characteristic that makes me significantly different from most of those around me. It gives me reason to empathize with others who are different in other ways.

**A FIELD GUIDE TO
UNMARRIED WOMEN NO LONGER YOUNG**

Constance K. Lundberg

In the fourth tier of Symphony Hall,
In the coarse old days called nigger heaven,
Congregate unmarried women, no longer young

Forest green carpet, elegant last season, little worn
By the sensible shoes, stuffed, shapeless pockets of
Leather hanging over stacked heels, well worn.

The small front hall entry,
Crossed by pairs and trios of women,
Quietly talking, migrating to their seats,
Herded by occasional men, too thin for shiny suits,
Being good about the friends of their comfortable mates

A mother and daughter (past her prime),
Perpetually wrapped in long cloth coats
Covering flower print dresses draped over ample bosoms,
Read, side by side, ankles crossed,
Until the last bell calls
Whispering, chattering ladies settle in,
Listen to composers of the Classic era
Spiced with Brahms and Ginastera

Medium-aged women, suited and hatted,
Stride to their booths,
Lunching in well-lighted chic—
Rose walls, deferential young waiters with cute buns—
Laughing, teasing over improbable possibilities,
Toying with salads and dried slivers
Of old loves, remembered quirks,

Not remembering long waits
With warm Brie and cold gin,
Smiling welcome,
Not presuming to reproach,

Empty beds, drained of passion,
And hugging cold pillows for comfort
In the hour before dawn

The warm, smoky semi-dark bar,
A hissing undercurrent of languid conversation
Swept by an occasional wave of high spirits,
Good fun. Friends coalescing into pairs,
Ready to go home at the end of the day

Entice them to stay with hors d'oeuvres
And dry wit, the fullness of eating and drinking too much
A shadow of hoped-for-feared fertility,
Washed away later, alone,
By the deep, ever present, wells of
Self-loathing in the secrecy of one's apartment.

Weekends are the empty time.
An unmarried woman slides into the comfort
Of sheets and quilts, burrows into mounds of pillows
With books and Bach. Her conversation
The humorless heroism of Asimov,
The brittle order of Austen.

Paralyzed in the closeness of air breathed too long,
Food of a bland, convenient sameness
Providing sustenance but no impetus to move.
Did the Israelites spend forty years in the wilderness
Sapped of will to move by manna?

She yearns for the melons of Egypt, sharp, wet,
Sour/sweet, cool on the tongue, slipping down the throat,
Stirring the still, stale blood. Easing down
Beneath the covers, reaching for another book,
She contemplates escape from her soft self

GRANDFATHER QUEST

Susan Polizzoto

When the opportunity came to study in Rome last summer, I seized it. Comparative law interested me, but thoughts of my grandfather's boyhood home in Sicily drove my ambition. I planned to find Polizzi Generosa, 900 meters up in Sicily's volcanic mountains, as soon as school was out. In anticipation, I gathered what threads of information I had: a copy of my grandfather's birth certificate, sent years ago by a priest in Polizzi; a 30-year-old map of Italy, showing Polizzi as a small dot in central Sicily; and several postcards covered with Italian script, indecipherable except for my grandfather's name and an address—38 Garibaldi, Polizzi Generosa.

Once in Polizzi, luck greeted me in the form of a woman named Lina who heard about my quest and invited me over to the small grocery store she owned. Her mother's maiden name was Polizzotto, and she remembered an American relative, her mother's cousin, who had visited about 30 years ago when she was a young woman. "He was bald and his ears stuck out like this," she said, cupping her hands behind her ears and bending them slightly forward.

"Yes!" I replied, amused and astonished at the accuracy of her description. "That just might have been my grandfather." Browsing through her store, I noticed piled on a shelf bags of S-shaped biscuits—one of my father's favorite treats. Grandpa probably ate these, then Dad acquired a taste for them without even knowing why he likes them. Lina noticed me staring at the biscuits and offered me some. Then she invited me over to her mother's house the next day.

The whole family had convened to meet me. Lina handed me an old black and white photograph of three men standing on some steps and asked me if I recognized anyone. The man in the middle had large ears, a bald pate, and a warm, broad smile.

"Sì, nonno mio." I would have recognized Grandpa anywhere from that photo and others I had seen, looking just the way Lina described him to me in her store the day before.

The family was overjoyed at my mysterious appearance from America. We talked and hugged and laughed for several hours. Questions and answers flew back and forth. When the excitement died down, the men drifted back to their strolling and sunbathing, and the women returned to their ceaseless chatter.

Around noon the next day I walked to the cathedral to celebrate mass with my relatives. The sermon that day was on the parable of the merchant, who, when he found the pearl of great price, sold all that he had to buy it—"Il regno di Dio è simile ad una perla, che un mercante acquista vendendo tutti i suoi averi." After the discourse, which was somehow more uplifting for having been in a language I didn't understand, I rose and walked to the front of the church, took the eucharist from Padre Forti, and walked slowly back. I did not sit down, but knelt for a long time on the hard wooden plank in front of my seat, thanked God for my dream, thanked God for my quest, and thanked God for the friends who had helped me. I felt like a humble soldier, alive and home from the crusade.

The quest for Polizzi taught me many things. I learned to live out a dream, to pursue it fearlessly wherever it took me. I learned that the best experiences in life often come unsought. In my mind, there was no rationale for my dream; I only desired to go to Polizzi. And so I went in search of a town on a map and found a community of people. I sought my dead grandfather and found living relatives and friends. I followed a dream and discovered myself. Inadvertently, I had found a pearl worth selling all for.

PRAYER AT TEOTIHUACAN

Paco Guajardo

I sit upon the steps
of a forgotten tombstone
leading to the sun
wondering.

Where are its builders?
Its noble warriors?
Where have they gone?
Is this ruined legacy they've left behind
a warning
of what we might become?

Yesterday
our fathers ran up these steps
to offer their god
a bleeding,
palpitating,
heart,

But,
He remained silent
Ignored their cry
And now,
they are gone,
conquered by those who came later
wielding a sword
and
a cross

Today the call of war is heard
raging
in southern lands
Libertad!
Democracia!
Equidad!

I too,
like those of old,
offer a heart.
But it's my heart,
God.
Pleading for peace.
That no more blood
will ever stain these steps
And your children become one

Will you listen this time?

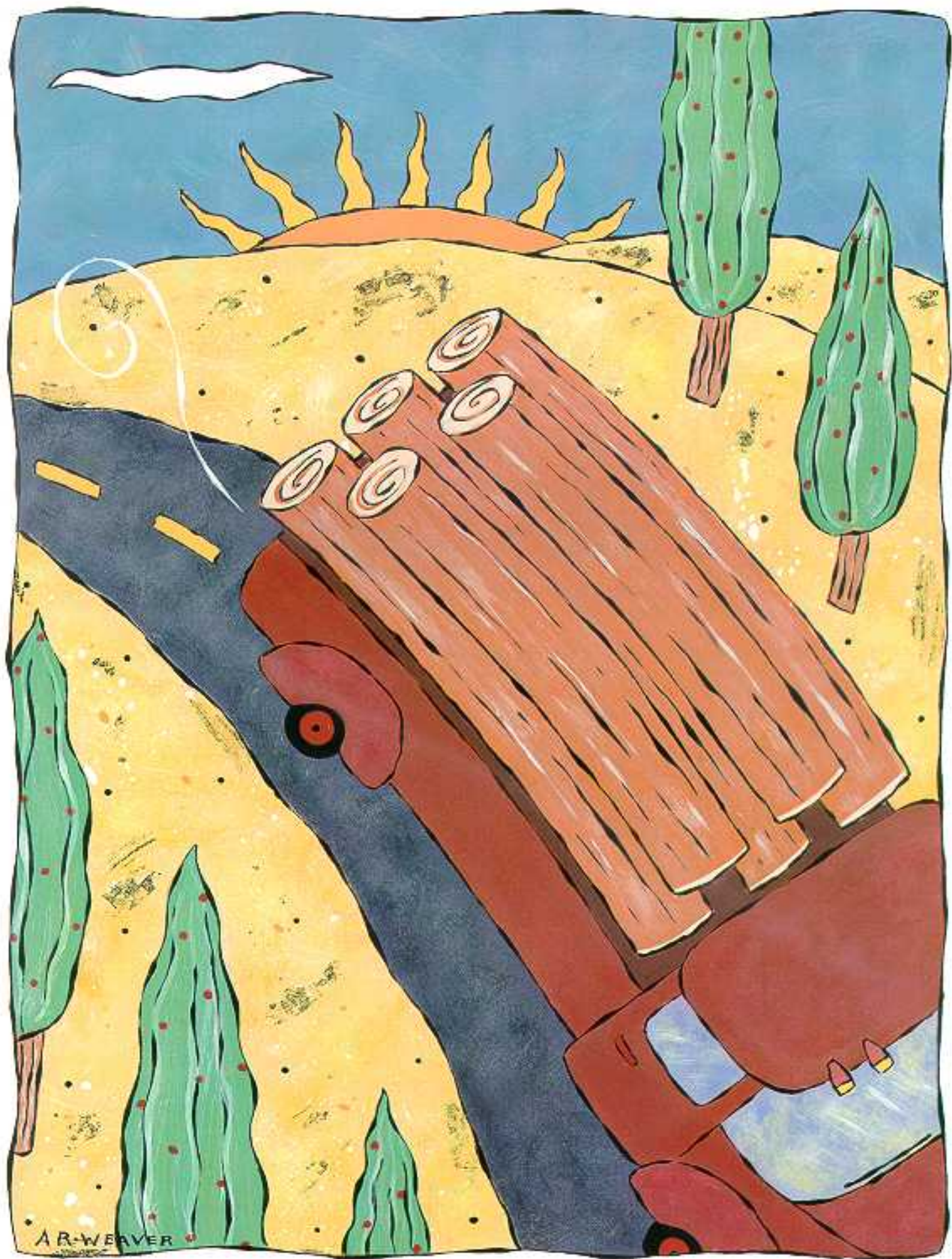
I sit upon the steps
of a forgotten tombstone
leading to the sun
In the once mighty city of the gods,
Teotihuacan.

BALANCE

*My dear young
brothers and sisters, this is a privilege
for me to be here among you.
It brings back so many fond memories
and some not-so-fond days in
law school. I saw some of you come in
with young children, and I thought back
to my days in law school. I had three*

Elder Robert L. Backman
Presidency of the Seventy

This fireside address was given March 24, 1991.



children by the time I was through with law school I guess I attribute the loss of my hair to that.

I will never forget, as we finished our law school, we started exam week, and my wife was seriously ill. She was so ill that I thought she was dying. The night before exams started, we had to get the ambulance to come for her, because she was hemorrhaging. I piled into the ambulance with her and my law books, went up to the hospital, and wondered all night whether she was going to live or die. I had to go up the next morning and start my exams. When we finished our exams that week, I broke out in hives from head to toe. That was my introduction to the practice of law.

It has been a most pleasant and wonderful career. I commend all of you who are seeking to become legal scholars and practitioners and promise you a rich and wonderful adventure ahead of you. I want you to know that law school is worth it, and the light at the end of the tunnel becomes brighter as you go along. The wonderful experiences you have when you can share your knowledge and understanding of the law and what this great country is built upon will redound to your benefit often, believe me.

I am honored to be here with you. I am honored to be here with my younger brother [Professor James Backman]. Unfortunately, I haven't been able to spend much time with him since he was plucked away from the law practice by Dean Lee many years ago. I am also grateful to be here with Scott Cameron, who was a member of our firm when I was called to be a General Authority of the Church. So I feel I am among friends. Also, Dean Hansen and my brother came down here to BYU the same year; I have known him for a long time and admired him. I want you to know how fortunate you are to have the people who are teaching you in the Law School.

I wonder what I could say to you that could be worthwhile. I hope you will let an old man talk a little bit about his own experiences, some things I think might be important for you as you embark upon this great adventure that lies ahead of you.

is only one short verse in all the Bible that describes the 18 years of the Savior's life—the years between his visit in the temple with the rabbis as a boy of 12 and the beginning of his ministry at the age of 30—but that one verse gives us a marvelous pattern to follow in obtaining a rich, happy, fulfilling life: "And Jesus increased in wisdom and stature, and in favour with God and man" (Luke 2:52). I take that to mean that Jesus Christ grew mentally, physically, spiritually, and socially. On the threshold of your adult life as you are, it is an appropriate time, it seems to me, for you to ponder what you are doing, what you can do to achieve that kind of balance in your lives.

How vital such balance is was shown by the man who was driving a huge truck full of lumber. The truck had a powerful motor with plenty of horsepower, the frame was well built, and it held all the lumber that could be stacked on its mighty bed. But a strange thing happened to that truck as it pulled out toward the street. Just as the rear wheel dipped into the gutter, the entire front end of the truck reared up

off the ground. The heavy load of lumber on the truck bed teetered slowly toward the ground. It was an odd sight to see the driver sitting in the cab frantically turning the front wheels back and forth but unable to steer his vehicle. The power was still there, but he couldn't do anything with it. He lost control, not because of the size of the load of lumber or the lack of power in the vehicle, but because the load was simply misplaced.

Sometimes, like the load of lumber, our lives get out of balance. Before we know it, our load controls us. We lose the ability to steer and to direct our lives. The remedy is to grow mentally, physically, socially, and spiritually—to become well-rounded squares, so to speak.

In our own dispensation, the Lord gave us this direction:

Teach ye diligently and my grace shall attend you, that you may be instructed more perfectly in theory, in principle, in doctrine, in the law of the gospel, in all things that pertain unto the kingdom of God, that are expedient for you to understand;

Of things both in heaven and in the earth, and under the earth; things which have been, things which are, things which must shortly come to pass; things which are at home, things which are abroad; the wars and the perplexities of the nations, and the judgments which are on the land; and a knowledge also of countries and of kingdoms

[And this interesting verse:] *That ye may be prepared in all things when I shall send you again to magnify the calling whereunto I have called you, and the mission with which I have commissioned you* [D&C 88:78–80]

Abbreviating that challenging passage of scripture, the Lord has told us to keep balance in our lives by being instructed in all things, "that ye may be prepared to magnify the calling whereunto I have called you." None of you here knows what life has in store, its length, its breadth, what experiences lie ahead of you. Looking back on my own life, I marvel at the rich adventure I've enjoyed, and I thank God for the balance I've been able to maintain.

I well remember my first day in law school at the University of Utah, as the dean (Dean Leary, a frightening man, a long, spare man, with less hair than I have, a very ruddy complexion, and small glasses that he wore on the end of his nose) looked at us, a class of new law students, and thundered, "The law is a jealous mistress! You will have no time for anything else. It must be first in your life."

I resolved then that I was going to prove him wrong, and I did. I am grateful for my education. I thoroughly enjoyed my law practice, but I enjoyed it because of other interests I maintained. I love my family; I recognize at this stage in my life they really are my wealth, and little else counts.

When I was a boy of 12, my dad was called to be the president of the South African Mission. We left our home in Salt Lake City and journeyed out to that far-off land. We stopped in London to wait for a ship to take us down the west coast of Africa to our home in Capetown. While we were there we attended a testimony meeting in a branch in south London. To give you some idea of how long ago it was, the missionary who escorted us was one Gordon B. Hinckley, who was then

serving as a missionary in England. During that meeting, my father stood to bear his testimony and said something very important. He said, "When you come right down to it there are only two things in life that really count: the gospel of Jesus Christ and your family."

You know, young friends, the older I get, the more I realize the truth in what my dad was saying. It is hard for me to separate my family from the gospel, the gospel from my family. They're so held in esteem by me. I love my family.

I have served my community. Jim mentioned the fact that I have been active in Scouting. I have had some very rich experiences just out of that little bit of service. I challenge you to find ways to serve that way.

I will never forget when I came back from serving as a mission president in the Northwestern States Mission. I was trying to get back into my law practice and trying to get my life back in order when I received a telephone call from the chair of a political party in the state of Utah, asking me to run for the state legislature. I said, "No, I don't want to do that. I have been away for three years; I've got to put things back in order, and I need some time for myself." I continued with one excuse after another.

He finally stopped me and said, "Yes, you have done all of that, but what have you done for your community lately?" I couldn't answer very well. So I enjoyed four wonderful years in the House of Representatives in this state—an experience I would wish on any of you because of the genius of this government of ours that I love so much.

I have had many callings in the Church. I lamented every release I received, because I thoroughly enjoyed every assignment. I challenge you to do the same.

I try to keep myself physically fit. I walk regularly; I play squash and golf. I have attempted to be a well-rounded square. It has paid rich dividends, dividends beyond my imagination. The challenge I extend to you, my young friends, is for you to maintain balance in your life—to keep growing mentally, physically, socially, and spiritually.

To grow mentally, of course, is to increase in wisdom as Christ did. What opportunities lie ahead of you if you take advantage of your educational blessings here at Brigham Young University! I am so grateful to live in a land and at a time when all of us can have an education. I am so grateful for the gospel, which encourages us to learn, study, grow, magnify, increase, expand, and progress forever. Isn't that a glorious idea to think about? Consider the impact these inspired statements have on us as members of God's Church: "The glory of God is intelligence" (D&C 93:36). "It is impossible for a man to be saved in ignorance" (D&C 131:6). Man can be saved no faster than he gains knowledge (see *Teachings of the Prophet Joseph Smith* [Salt Lake City: Deseret Book Co., 1976], p. 217).

Brigham Young told us how important our mental development is:

I tell you in a few words what I understand "Mormonism" to be

It embraces every fact there is in the heavens and in the heaven of heavens—every fact there is upon the surface of the earth, in the bowels of the earth, and in the starry heavens; in fine, it embraces all truth there is in all the eternities of the Gods

"Mormonism" embraces all truth that is revealed and that is unrevealed, whether religious, political, scientific, or philosophical [Journal of Discourses, 9:149]

I have had many callings in the Church.

I lamented every release I received,

because I thoroughly enjoyed every assignment.

I challenge you to do the same.

God expects us to use our minds, to stretch our intellect, to think. Some people would rather die than think, and many do. I envy you; the years are ahead of you. There are so many frontiers yet to be conquered by you. Think of the vistas that are open for you: the exploration of space, computers, medical advances, transportation, communication, social and moral revolutions, the expansion of God's church, the search for truth—all the challenges facing the world and mankind. What a time to be alive!

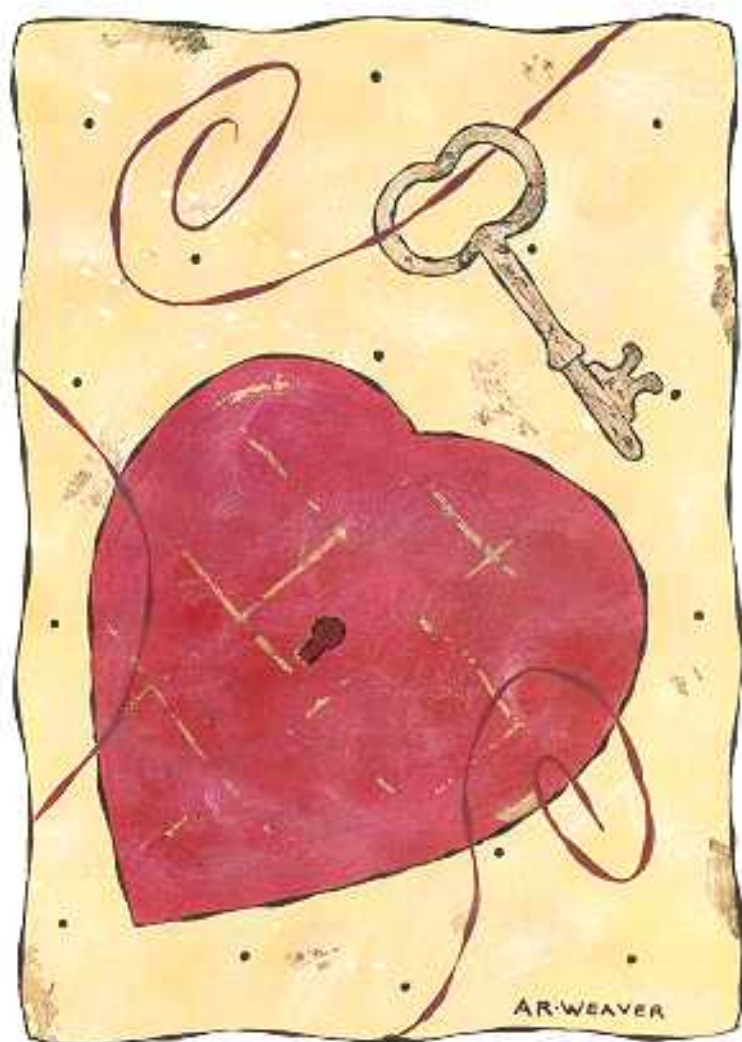
In 1972, after landing on an area of the moon named for René Descartes (the 17th century mathematician and philosopher), astronaut John W. Young chose a quotation from Descartes to summarize the meaning of that space flight. Listen to his words: "There is nothing so removed from us as to lie beyond our reach or so hidden that we cannot discover it." Isn't that exciting?

Yes, my young brothers and sisters, I urge you to soak up all the education you can in this singular learning environment. Stretch your minds and skills as far as you can, but beware. Heed the counsel given to us by the prophet Nephi:

O that cunning plan of the evil one! O the vainness, and the frailties, and the foolishness of men! When they are learned they think they are wise, and they hearken not unto the counsel of God, for they set it aside, supposing they know of themselves, wherefore, their wisdom is foolishness and it profiteth them not. And they shall perish.

But to be learned is good if they hearken unto the counsels of God. [2 Nephi 9:28–29]

I can give you no better advice than that given to Henry Eyring, the famous scientist, by his father, as Henry left the farm



to attend his freshman year at the University of Arizona. His father said:

So you're going to Tucson to study science, eh? Well now, that's what you want to do, isn't it? I don't know much about science, son, but I know quite a bit about some other things. I do know the Lord spoke to the Prophet and that the gospel is true. I know our gospel teaches truth regardless of its source. Now, I've tried to tell you the way things look to me, and perhaps sometimes I've told you things that don't exactly jibe with the truth. If I have, just discard those things. In this Church you don't have to believe anything that isn't true. If you want to be a scientist, son, you hit it just as hard as you can. You're going to hear some things up there that don't exactly jibe with what you have learned in Sunday School, but don't worry about it. Just keep an open mind and truth will eventually work its way to the surface. I don't worry about how much you learn. Study all the science you can, and remember your prayers and don't profane and live in such a way that you will feel comfortable in the company of good people, then mother and I will feel good about your going. Don't you worry about the gospel, son. It will stand the test of all truth. [The Search for Truth in Science and Religion (Salt Lake City: The Church of Jesus Christ of Latter-day Saints, 1961), pp. 13–14]

physically, increase in stature as Christ did. Unfortunately, our worldly way of life is gradually and quietly, but steadily, robbing us of physical health and robust fitness—cars, TV, spectator sports, rich foods, drinking, smoking, drugs, immorality, emphasis on luxury, hedonism, and the doctrine that pleasure is the highest good. Someone described our life-style as GIGO (garbage in, garbage out). How grateful I am for the Word of Wisdom. Practicing its saving principles has been a real blessing in my life. I assure you that the Lord was speaking to us when he gave the glorious promise contained in the 89th section of the Doctrine and Covenants, which we often overlook as we talk about the Word of Wisdom:

And all saints who remember to keep and do these sayings, walking in obedience to the commandments, shall receive health in their navel and marrow to their bones;

And shall find wisdom and great treasures of knowledge, even hidden treasures;

And shall run and not be weary, and shall walk and not faint

And I, the Lord, give unto them a promise, that the destroying angel shall pass by them, as the children of Israel, and not slay them [D&C 89:18–21]

Please remember that these bodies of ours are the tabernacles of our spirits, which have come to us from God. As we care for them, bridle our passions, appetites, and thoughts, and take control of our lives, we will experience the promises God has made to us. We will achieve a balance that would be lacking without our self-discipline. How I pray that you great young people will be modern Daniels, as you develop physically by living the Word of Wisdom in all of its aspects and experience the promises God has made to you in return.

Notice how our physical development influences our mental growth and our social and our spiritual progress. Grow socially; increase in favor with man. I love these words of John Donne:

No man is an island, entire of itself; every man is a piece of the continent, a part of the main; if a clod be washed away by the sea, Europe is the less, as well as if a promontory were, as well as if a manor of thy friends or of thine own were; any man's death diminishes me, because I am involved in mankind; and therefore never send to know for whom the bell tolls; it tolls for thee [John Donne, *Devotions upon Emergent Occasions* (1624), no. 17]

We live in a society. The better adjusted we are to our society the happier we are going to be. If we are to have a better society, it will not be assembled in think tanks or by computers; it will be fashioned in the hearts of men; it will be found in seven simple words, “Thou shalt love thy neighbor as thyself” (D&C 59:6). That is a surefire formula for happiness, believe me. The Lord says, “Thou shalt love,” not “Thou shalt try to love.” Can love be commanded? Can we force ourselves to love? Someone asked me, “How can you love a neighbor you just don’t like?” The key is, how do we express love to ourselves?

We have a deep and continuing desire to stay alive, to stay well, to avoid hurt or physical danger. We want to have friends, to develop our capacity. We want to enjoy beauty. We want to be secure financially. We want to know who we are, where we came from, and where we are going. When we supply these and other basic wants, we do it because we love ourselves. Now, if we love our fellowman, friend or enemy, we develop within ourselves a desire to help them realize the same things we want for ourselves. This desire for others can be willed; it can be developed; it can be commanded. What it takes is getting to know them and accepting them as our brothers and sisters, with the same divine potential to become like our Father in Heaven that you and I have.

I love the words of Will Rogers: “I never hated a man I knew.” We best show our love for our neighbor by serving him. It’s no accident that the primary role of the priesthood of God is to serve our fellowman, and it’s no accident that we are happiest when we are serving. I don’t hesitate to tell you that your happiness will be commensurate with the service you render. So find ways to serve and be happy. There is no better place for service than in The Church of Jesus Christ of Latter-day Saints. How badly God needs faithful young men and women who know who they are, where they came from, why they are here, and where they are going. The Church is just gathering steam, my young friends, and in your lifetime you will experience some of the greatest events in the world’s history. Don’t let anyone sell the future short. You are going to be there.

Many years ago, I was called by President Harold B. Lee to be the president of the Aaronic Priesthood MIA. When he called me, he issued me a challenge that I never have gotten out of my mind. He said, “Bob, I challenge you to present a program to prepare this generation of youth to meet the Savior when he comes.”

Wow! You think of that I don't know whether he meant that in our lifetime we would see that great historical event for which we are all waiting. I do know that you and I can prepare for that event, whether we are here or not We will have that opportunity of meeting our Lord and Savior. I challenge you to be where the Lord can find you, and many wonderful opportunities for service will lie ahead, and you will grow socially One word of warning: we are to be *in* the world but not *of* the world

the unintended side-effect of one's personal dedication to a cause greater than oneself or as the by-product of one's surrender to a person other than oneself Happiness must happen, and the same holds for success: you have to let it happen by not caring about it. I want you to listen to what your conscience commands you to do and go on to carry it out to the best of your knowledge Then you will live to see in the long run—in the long run, I say—success will follow you precisely because you had forgotten to think about it [pp 16–17]

Your happiness will be commensurate with the service you render.

*So find ways to serve and be happy. There is no better place for service
than in The Church of Jesus Christ of Latter-day Saints.*

When we become worldly, carnal, sensual, and devilish, we lose that important balance that is vital to our well-being We find ourselves in monkey traps.

When I lived in South Africa I remember hearing about how natives trapped monkeys They simply took coconuts, knocked the tops off, and hollowed them out, with a hole in the top large enough for a monkey to get his paw in Then they anchored the coconuts to the ground and put a peanut in the bottom of each one The monkeys would smell those peanuts and, loving them as they do, would reach in and grab the peanuts They would take the peanuts in their paws, but with doubled-up fists they couldn't get their paws out of the holes All the natives had to do was pick up those monkeys and put them into gunnysacks They would bite and kick and scream and yell, but they would not let go of the peanuts, even to save their lives

Do you know anyone who is caught in a monkey trap, who is worshiping false gods: position, fame, wealth, approval, success?

Success I recently read Viktor Frankl's *Man's Search for Meaning* (New York: Washington Square Press, 1985), a tremendous book written by a man who suffered through the Holocaust, saw his family killed in the ovens, and yet came out of it with a marvelous philosophy of life Listen to what he says about this matter of success

Don't aim at success—the more you aim at it and make it a target, the more you are going to miss it. For success, like happiness, cannot be pursued; it must ensue, and it only does so as

Isn't that an interesting comment, from a man who really did discover the secret of happiness? Remember that God has commanded us, "Thou shalt have no other gods before me" (Exodus 20:3)

I pray that you will grow spiritually, in favor with God Carol Lynn Pearson and Scott Whitaker wrote a beautiful poem concerning that:

*O Man, ascending on your self-built step of steel,
Raising hands in praise of your own bright artistry,
Looking at your world through the audacious glass of newly
conquered space
With never a thought for tomorrow's consequences,
Letting the material things of this world
Shut out your view of a better one,
Forever scurrying in a frenzy to acquire more than your neighbor,
Neglecting the spiritual while perfecting the physical,
Waving a worded banner of Utopian hopes,
Never learning from the same words carved on the stones
Of every century since words and stones and centuries began,
Looking in vain for happiness that constantly eludes,
Devising monuments to your own greatness;
O man, ascending on your self-built step of steel
You forget the true purpose of life until too late,
Until the harvest is past, the summer is ended, and
Death, the stranger, is at your door*

Blessed with testimonies of the gospel of Jesus Christ, you and I understand the purpose of life and our eternal

goals. Contrast that with the understanding of your friends outside the Church, who do not have a testimony of the gospel. That blessed testimony, my brothers and sisters, gives us the proper perspective and the motivation as we grow mentally, physically, and socially, and in favor with God. We have the truth, and we practice virtue. That sets us apart from the rest of the world, which tries to find truth without getting virtue. Yes, we want you to get an education, to achieve academic excellence in the context of Latter-day Saint values. There is no end in the progress of a man or a woman who seeks the truth. President Harold B. Lee, in a talk to seminary teachers several years ago, said: "Drive your testimony deep into the rock like a stake, tie the rope of faith to it, and play it out as far as you can. When you feel yourself slipping, pull back into the stake, your testimony of the gospel of Jesus Christ."

The Lord declared to us, "Seek ye first the kingdom of God, and his righteousness; and all these things shall be added unto you" (Matthew 6:33). All these things—God was speaking of all that he has. The blessings are unlimited for those who are faithful and true. The prophet Alma counseled his son Helaman in these words:

O, remember, my son, and learn wisdom in thy youth; yea, learn in thy youth to keep the commandments of God

Yea, and cry unto God for all thy support; yea, let all thy doings be unto the Lord, and whithersoever thou goest let it be in the Lord; yea, let all thy thoughts be directed unto the Lord; yea, let the affections of thy heart be placed upon the Lord forever

Counsel with the Lord in all thy doings, and he will direct thee for good; yea, when thou liest down at night lie down unto the Lord, that he may watch over you in your sleep; and when thou risest in the morning let thy heart be full of thanks unto God; and if ye do these things, ye shall be lifted up at the last day [Alma 37:35–37]

you apply that to your studies here at the Law School? If you do these things, you will then study along with your law the holy scriptures, the principles of the gospel of Jesus Christ. You will pray earnestly and sincerely from the heart, seeking guidance for your life, building your faith in God, understanding your relationship to him. You will fast purposefully, thoughtfully, prayerfully, and regularly. You will live his holy principles and commandments, which is really the true test of your faith. You will respond to calls to serve in his kingdom, experiencing the joy that comes from such service. You will sustain and follow your leaders, confident that they are inspired in their callings. You will bear witness of the gospel through your words and actions, sharing the truth with your fellowman. You will seek his Holy Spirit knowing that the things of God are only understood by the Spirit of God. You will be honest, true, chaste, benevolent, virtuous, doing good to all men. You will love your neighbors as yourself, even those you don't like. You will continue to seek anything virtuous, lovely, or of good report, or praiseworthy. You will be a devoted Latter-day Saint throughout your life.

My young brothers and sisters, our victory over Satan is dependent upon our being taught the gospel of Jesus Christ, in experiencing those gospel principles in our lives, in developing firm, unshakable testimonies, in showing that the gospel is the solution to our problems and the problems of the world. As one of your leaders who loves you dearly, I challenge you to find the anchor that will bless you forever, to maintain the balance in your individual lives that will lead to rich, full years of service and happiness here and the glorious promise of eternal lives and exaltation hereafter.

I will never forget when I was in your shoes. I came to law school fresh out of the army after the Second World War. I had been away from my studies for a long, long time. I resolved as I was aboard the troop ship on my way home from the war that I was going to concentrate all my efforts on my law studies. I came home with that intention and believed what Dean Leary later said to me when I went to law school, that the law was a jealous mistress and I would have no time for anything else. With the savings I had from being overseas, not spending any money while I was in combat, my wife and I bought a little house. One of the first things I did was to go to downtown Salt Lake City to find a job so we could sustain ourselves. I boarded the bus, because we didn't have a car, and rode downtown. Wouldn't you know it? A man sat next to me on the bus who turned out to be the bishop of our ward. Before I got off that bus, I was the deacons quorum adviser of that ward. Gone were all my good intentions to concentrate on the law only.

I'm so grateful for that bishop; I'm so grateful for the direction of my Lord and Savior. I'm so grateful he saved me from an unbalanced life and gave me a rich assurance that life can be beautiful. You can make a good living; you can enjoy the blessings of the law; and you can enjoy the blessings of a great society and service to your fellowman. I still keep that balance of which the Lord spoke to all of us. My young friends, will you accept the challenge to be instructed in all things, that you may be prepared to magnify the calling whereunto God has called you? I assure you he has. Sitting in front of me are the future leaders of this Church and of this and other communities: political leaders, business leaders, lawyers of note, jurists, and great citizens of this nation. Perhaps some of you might become unfortunate enough to become a General Authority later in your life. God bless you to experience life to the fullest, by keeping the balance that will assure you that you are a son or a daughter of God, that he loves you, knows you, and knows the experiences you need to come back into his presence. He will grant you those adventures if you place yourself in his care, seeking first things first, and maintaining a balance in your life.

Remember what the scriptures said, "And Jesus increased in wisdom and in stature, and in favour with God and man." I could wish nothing better for each of you at this stage in your life. I love you as brothers and sisters in the gospel of Jesus Christ. I pray his blessings upon each of you and all you undertake to do. As difficult as it may seem, I want you to know right now you are as much alive as you will ever be. So enjoy every day what you are doing. Make the most of it, and let the Lord reach out and touch you, bless you, and enlarge you with the capacity to do all he asks you to do.

THE SWEET TASTE OF IRONY

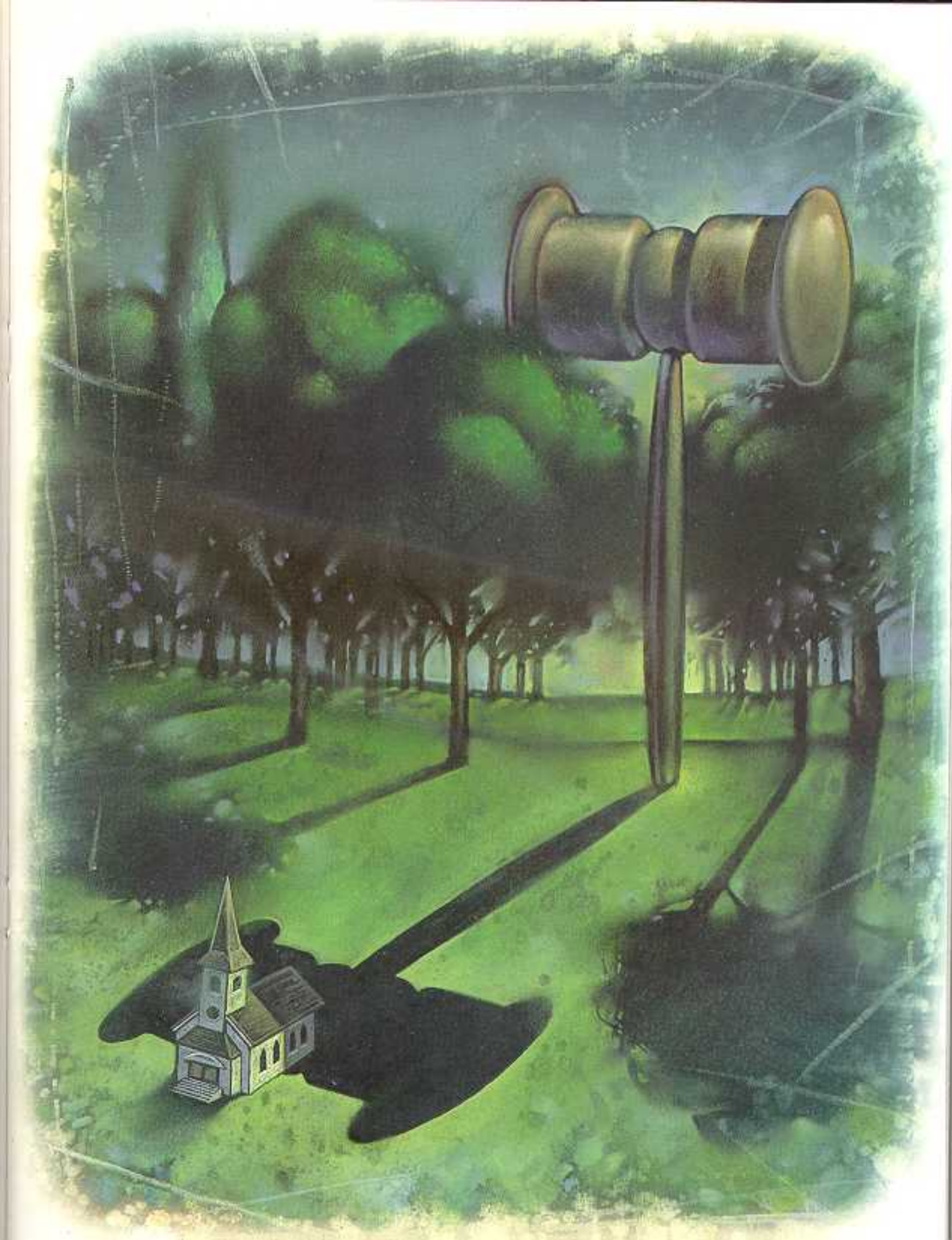
Frederick Mark Gedicks

IN THE EARLY 1970S, WHEN THE CHRISTIAN RIGHT WAS ONLY A FEW VOICES CRYING IN THE WILDERNESS, RELIGIOUS CONSERVATIVES DREAMED OF THE DEFEAT OF THE FORCES OF SECULARISM. THEY LOOKED FORWARD TO A DAY WHEN ABORTION WOULD BE ILLEGAL AND

school prayer and tuition vouchers would not, a day when government and religion would be partners rather than adversaries. Back then, however, they could only dream. Despite many Republican appointments since the 1950s, the Supreme Court remained firmly committed to a secular liberalism, and the “moral majority” was more than wishful thinking in only a few southern and Rocky Mountain states. ✂ Things change. Religious conservatives aligned themselves with secular conservatives, and together the two now dominate the Republican Party at all levels. Even

among Democrats, all but the most courageous now run from the “L word.” If the Reagan years marked a conservative shift in the political mood of the United States, then President Bush and the Republicans now seem positioned to consolidate that shift into a conservative Republican majority in Congress, something Reagan had for only a few years, and then only in the Senate. ✂ But if the conservative revolution in Congress is still to come, the revolution in

An earlier version of this essay appeared in The Christian Science Monitor, on July 18, 1991, at page 19, columns 1–5, under the title, “Religious Conservatives Misjudged the Court.”



the Supreme Court has already come and gone. With the elevation of Justice Rehnquist to chief justice and the successive appointments of Justices O'Connor, Scalia, Kennedy, Souter, and Thomas, conservatives have grown into a position of dominance on the Court. Consequently, the agenda of religious conservatives has been substantially advanced by Supreme Court decisions. *Roe v. Wade* (1973) has been badly eroded, and is poised to topple. In a ringing endorsement of traditional religious values, the Court refused to recognize homosexual rights in *Bowers v. Hardwick* (1986). *Bowen v. Kendrick* (1988) upheld federal grants to religious social service organizations to provide teenage pregnancy (but not

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abortion) counseling. Other government sponsorship of religious activities has been repeatedly approved by the Rehnquist Court, and recently *Mergens v. Board of Education* (1990) even granted group prayer a cautious re-entry into the public schools.

Perhaps distracted by all these victories, many religious conservatives failed to notice other, less congenial developments on the Court during these years. In *Goldman v. Weinberger* (1986), a majority opinion by then-Justice Rehnquist held that the free exercise clause did not exempt an orthodox Jewish officer from military regulations that prevented him from wearing a yarmulke with his uniform, worrying that permitting the yarmulke might require the military to allow cowboy hats as well. In a subsequent case, *Lyng v. Northwest Indian Cemetery Association* (1988), Justice O'Connor held for the Court that the free exercise clause did not prevent the government from building a logging road near a sacred Native American worship site, even as she acknowledged that the road would have a "devastating" impact on the tribe's religious practices. In still another case, *Jimmy Swaggart Ministries v. California Board of Equalization* (1990), Justice O'Connor and the Court

decided that the free exercise clause did not exempt a church's sale of Bibles and other religious literature from a state sales tax because churches were not specifically targeted by the tax.

The Court applied the coup de grace in *Smith v. Employment Division* (1990). In an opinion by Justice Scalia, the Court abandoned more than 25 years of case law that had protected religious free exercise. Instead, the Court decided that the free exercise clause did not exempt religious organizations and individuals from generally applicable legislation, no matter how great the burden on religious exercise and no matter how trivial the government's reason for applying the law to believers.

Smith literally set free exercise doctrine back a hundred years, to the prosecution of Mormon polygamists under federal antibigamy laws. In the wake of the Court's decision in *Reynolds v. United States* (1878) denying Mormons a free exercise exemption from these laws (which Justice Scalia cited with approval in *Smith*), the federal government dissolved the corporate status of the Mormon church, seized its property, and appointed a receiver to administer its affairs. The Supreme Court sustained all these actions against constitutional challenge. It even upheld an Idaho law that required nonpolygamous Mormons to affirm, before voting, that they did not hold to Mormon beliefs about marriage. With their church on the verge of disintegration, the Mormons finally abandoned polygamy. Only then did the government relent.

The repeal of free exercise rights by the new "conservative" Supreme Court shows how irrelevant partisan labels have become to religious freedom. American politicians today are largely divided by varying commitments to "statism" and "libertarianism." A statist generally supports government intervention and regulation; a libertarian generally opposes it. Political conservatives (and especially religious conservatives) tend to be libertarian on economics and business matters, and statist on matters of personal morality; political liberals tend to be the opposite. On matters of religious free exercise, however, there is no such pattern among either liberals or conservatives; free exercise statists and libertarians are evenly scattered across the political spectrum.

Religious conservatives have assumed that secular conservatives and, in particular, Supreme Court conservatives are consistently libertarian about religious free exercise; events have proven otherwise. The conservative bloc of the Supreme Court is statist about religious freedom (and most other constitutional rights)—meaning that it will rarely, if ever, stand on the side of religious believers against government intrusion on religious belief and practice.

Believers should expect little from a Court that cannot tell the difference between a yarmulke and a cowboy hat, that deems the destruction of religious culture an acceptable cost of building a logging road, and that fails to see the coercion in government taxation of bona fide religious activities.

Religious freedom in the United States now exists at the sufferance of Congress and the state legislatures; there are no

longer any free exercise arguments to make for religious persons and entities burdened by generally applicable government action. Should Congress decide to draft Quakers or Jehovah's Witnesses into the military, the free exercise clause will not prevent resisters from going to jail. Should Congress or the states eliminate religious exemptions in antidiscrimination laws, the free exercise clause will not protect churches whose theology prevents them from ordaining women or homosexuals to the priesthood. Should Congress decide to tax churches, the free exercise clause will not protect those who refuse to pay.

The government is now free to deal with all religions the way it once dealt with the Mormons. And, like the Mormons, those who wish to survive in the United States will ultimately have to do the government's bidding.

An effort is now underway to reverse the effect of *Smith* through federal legislation, the proposed Religious Freedom Restoration Act of 1991. Ironies abound in this effort. For the first time in recent memory, religious conservatives find themselves on the same side of an issue as the American Civil Liberties Union. The purpose of the act is to restore the protective doctrine of free exercise exemptions articulated and developed by the Great Satan of conservative politics, the Warren Court (Impeach Earl Warren!) The Warren Court's exemption doctrine is the very doctrine that has been abandoned by the current conservative Court majority whose emergence religious conservatives greeted with such celebration.

Religious conservatives over the last generation believed that because their political agenda substantially overlapped

that of secular conservatives, the secularists also shared the believers' conviction that religion is individually and socially valuable, sufficiently valuable to merit protection against government intrusions. In this they were badly mistaken. No American political party on the right or the left embodies the theological interests of any religion, much less that religion's primal interest in independence and survival.

The corollary point is also true. Liberals may value religion even though they oppose religious conservative political initiatives, a point highlighted by the resignation of Justice Marshall last summer. Religious conservatives were uniformly glad to see Marshall go; he opposed virtually all of their programs. Yet, Justice Marshall was a solid vote for the free exercise of religion.

When President Bush nominated Judge Clarence Thomas to succeed Justice Marshall, religious conservatives showed no sign of having learned their lesson. Within days of Judge Thomas's nomination, they pronounced themselves pleased with his political views. As usual, religious conservatives assumed Thomas' support of their political agenda meant that he also believes in strong free exercise rights. Given the free exercise views of previous Reagan-Bush appointees, that assumption is naïve.

Religious conservatives are now reaping the harvest sown by their political alliance with secular conservatives; they would be well advised to plant more carefully in the future.

Professor Gedicks teaches classes on the First Amendment and law and religion at the Law School.

A NEW WINDOW ✂ CHOOSING THE DREAM: THE FUTURE OF RELIGION IN AMERICAN PUBLIC LIFE, BY Frederick Mark Gedicks and Roger Hendrix; Greenwood Press, Westport, Connecticut, 1991; 216 pages; \$42.95

*The thinking of most people in this country seems super-homogenized, following cues from our national media. The essays you read in one national magazine are mostly variations on a theme of the others, particularly when dealing with the Supreme Court, religion, and politics. The result—a precarious stultifying of thinking and a reluctance to allow digression from the “national” opinion. We fool ourselves, thinking we are diverse in our meditations and kind to those who don't share our views. But it is all mostly window dressing. ✂ So it is refreshing when someone gives us a new window through which to view a part of the world. For example, Mary Ann Glendon's book *Abortion and Divorce in Western Law* gives us a fresh view of how legislation affects our attitudes on divorce and abortion. ✂ In a similar vein, authors Gedicks and Hendrix have written *Choosing the Dream, The Future of Religion in American Public Life*, which gives a novel view of the relationship between religion and politics. Perhaps what's most unique about the book is that it features issues and provides some responses to questions most of us are only vaguely aware of—deep political currents pulling us unknowingly in directions we might not choose to go. ✂ Gedicks and Hendrix construct a convincing case that nonempirical and even some clearly irrational elements of our society are indispensable. Their arguments are designed to make sense to both the devout and the secular mind-set. For example, in the chapter “Religion and the Unconscious” they refer to the famed August Kekulé dream (that was a catalyst in Kekulé's discovery of the closed molecular structure of the benzene ring) to show that the unconscious mind can be an abundant fountain of knowledge and understanding. ✂ Other chapters detail the Supreme Court's record of minimal support for religious liberty; church-state separation issues; religious repression; why the threat of religious violence is falsely attributed to all modern religious groups; and the healthy integration of public life and religion. Across the religious and political spectrum, the book offers challenges to many assumptions. After absorbing this information, few will feel comfortable with the status quo. ✂ The one flaw a reader may notice is not in textual substance but in editing. Most editors feel that 10 percent of anything written is fat. *Choosing the Dream* seems to have skipped the rigorous editorial honing it needed. There are moments of verbosity and redundancy. But there are more moments of brilliant, thought-provoking writing. —Charles Cranney*

IN Defense OF American Tort Law

RALPH L. DEWSNUP, ESQ.

LONG BEFORE MY LAW SCHOOL DAYS, I was sitting in a class that was discussing money matters. For some reason the discussion became diverted and, like a car out of control on an icy road, it careened across other "lanes" of discourse until coming to rest on the topic of whether it was morally right to declare bankruptcy. Several technical questions arose concerning the legal effect of a bankruptcy that no one seemed able to answer, and the discussion came to an abrupt halt.

In any event, I looked over at the lone lawyer in the room, who sat thoughtfully, but silently, as others offered their opinions. I supposed there was a ready answer to this question sitting comfortably in his head, maybe even poised on the tip of his tongue. Yet he was not called on and did not volunteer his knowledge. The discussion suddenly died and the teacher then returned the class to the lesson at hand.

I must admit that I felt a certain sense of betrayal, or at least disappointment, that this lawyer had refused to share his knowledge with the group. I assumed at the time that he was disinterested or selfish or perhaps too pompous to bother with such trifles.

Later, I came to think that maybe the lawyer was simply wise. That is, he saw that the discussion was off track and that it would soon end if he did not speak up. Therefore, by his silence, he would help the teacher regain control.

After I went to law school, my analysis of this event changed again. Before law school I assumed that lawyers knew "the law." Bankruptcy, criminal law, contracts, probate—it was all "the law." Lawyers were supposed to know it all. When I got a glimpse at just how huge and dynamic the law was, my analysis of my friend's silence was that he probably did not know the answers to any of the burning questions on bankruptcy and prudently kept his mouth shut.

So here I stand before you with an invitation to speak on a law-related topic of my choice. My strong inclination is to look thoughtful, keep my mouth shut, and hope you will interpret my silence as wisdom. The danger of going further is that I will make you want to withdraw the offer of being the honored alumnus of this college. Since you may soon discover your error in bestowing this honor, I want to take advantage of this opportunity to say a few words on a topic of great interest to me.

I believe there are many societal benefits of the American tort system. I also believe that the recent attacks upon the system are unwarranted. Since some of you will be the legislators, judges, lawyers, and business leaders who will decide the future of the tort system, I hope you will agree.

The word "tort" is derived from the Latin "tortus," meaning "twisted." A tort then, is conduct that is twisted or crooked—not straight. The English equivalent is "wrong." Prosser says that "broadly speaking, a tort is a civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action for damages."

*This address was given at the
Honored Alumni Lecture Series
on October 25, 1990.*



Tort law requires accountability for conduct that harms another. Accountability requires the wrongdoer (or his indemnitor) to compensate the victim with money. In this fashion the law attempts, in a sometimes feeble way, to keep a balance in society by adjusting losses and injuries.

Although the concepts of tort law are ancient, the collection of tort law cases into a single body of the law is fairly recent. The first English treatise on torts was not published until 1859.²

The law of torts comes from behavioral duties imposed by society, and many of these duties have a moral component akin to the Golden Rule. You shouldn't assault, batter, slander, trespass, and injure a person's life, limb, property, reputation, or family relationships. When duties are breached and injury results, the offender is often required to compensate—providing restitution to gain societal absolution.

Though the law recognizes the victim's right to recover, society's response to the personal injury action is not so well settled. The plaintiff is seen as anything from heroic to vindictive, from lucky to pitiful. Seldom is the plaintiff or the cause regarded with indifference.

In the 1957 article "Damage Suits: A Primrose Path to Immorality"³ in *Harpers* magazine, the author spoke of plaintiffs as profiteers, feeding on society's sympathies and pocketbooks. About those who bring lawsuits, he said, "Many Americans—working men included—are now learning the cash value of dishonesty."⁴

Another view, expressed a few years before the above article, characterizes the personal injury victim in a much different way.

In the wake of crippling injuries comes pain, family hardship, mental anguish and suffering, brooding, feelings of shame, embarrassment, humiliation, fears of pity and poverty, and loss of the ability to support oneself and [one's] family. If the man is so badly injured that he cannot return to work, or if he can only do the work of part of a man, then the injured and his family may soon be cast as parasites on their relatives and friends, or as beggars upon charity and the community.⁵

Attitudes and perceptions in our community toward plaintiffs and would-be-plaintiffs in personal injury cases are at both ends of this spectrum (and at many points between). Some feel that to bring a lawsuit is to sin. Such beliefs are often grounded in honest concerns about philosophies of forgiving those who trespass against us,⁶ turning the other cheek to our assailants,⁷ suffering the loss,⁸ etc. Yet, others see no evil or impropriety when someone brings a lawsuit. They believe that "men should appeal to the civil law for redress of all wrongs and grievances for personal abuses inflicted"⁹ and that they are "justified in keeping the law of the land,"¹⁰ which, after all, provides a protection of rights and a redress of grievances.

Early tort decisions protected the interests of property owners and industry. Harper and James attribute this attitude to what they call "individualism."¹¹ The idea is "I am *not* my brother's keeper, and he'd better take care of himself."¹² This type of philosophy produced the maxim *caveat emptor* (let the buyer beware) in contract law. In torts it produced such doctrines as "contributory negligence" and "assumption of the risk." Contributory negligence is the policy of denying recovery of any kind to a victim of even monstrous negligence if he himself was even minimally negligent.¹³ Assumption of the risk is the doctrine that says a worker injured in an unreasonably dangerous

environment might be precluded from recovering compensation for his injuries on the grounds that he could have quit and worked elsewhere if he really wanted to be safe.¹⁴

Following World War II, we saw some significant changes in U S tort law. I like to think those changes were the result of a nation growing to recognize its responsibility toward individuals—perhaps recognizing that *people* were as great a resource as *property* and deserved greater protection than they had received. With the help of persuasive legal scholars and jurists, and sometimes legislators, we saw the pendulum swing away from ludicrous protection of industrial defendants and more toward the middle ground.¹⁵

Contributory negligence and assumption of risk were replaced with concepts of comparative negligence. Under the new doctrine, a victim would not be kicked out of court for being minimally negligent. Instead, the victim's conduct would be compared with that of the tortfeasor to determine whether there should be some recovery.¹⁶

The doctrine of strict products liability was adopted in many jurisdictions. This doctrine placed economic responsibility on the designers, manufacturers, and sellers of defective and unreasonably dangerous products for resulting injuries, without regard to whether specific negligent events during production could be proven.¹⁷

In other developments statutory caps on damages for wrongful death were repealed;¹⁸ governmental immunity was abolished or at least modified to give persons injured as a result of government misconduct a chance to be compensated;¹⁹ guest statutes were repealed or struck down as unconstitutional;²⁰ evidentiary rules restricting the admissibility of medical expert testimony from other than a strict locality were loosened;²¹ etc.

At the same time, consumer interests surged. Within the seven years between 1966 and 1973 the federal government created the National Traffic and Motor Vehicle Safety Administration (1966),²² the National Highway Safety Administration (1970),²³ the Occupational Safety and Health Administration (1970),²⁴ the Mine Enforcement Safety Administration (1973),²⁵ the Consumer Product Safety Commission (1972),²⁶ and the Environmental Protection Agency (1972).²⁷

Injured people began to complain and to win. Industry, the professions, and their insurers took notice. Since the mid-1970s, the public has been bombarded with claims that the tort system has run amok—failing and out of control—and that it must be reformed.²⁸

Despite the many articles that have been

written exposing the so-called “liability insurance crisis” or the “tort crisis” as a fraud,²⁹ there is considerable evidence that the American people were *duped* into thinking that their interests were not being served.³⁰ As a result, an avalanche of knee-jerk legislation was passed in many states to “reform” the tort system. In Utah alone, since 1976, the following laws have been passed: The Utah Health Care Malpractice Acts of 1976 and 1986;³¹ the Product Liability Acts of 1977 and 1989;³² the Inherent Risks of Skiing Act;³³ the Revised No-Fault Insurance Act;³⁴ the Liability Reform Act of 1986;³⁵ the Punitive Damage Act;³⁶ and the Governmental Immunity Reform Act.³⁷

Many of these acts were passed without any supporting data. The results they produced include the following: For medical malpractice claims, the statute of limitations was reduced, the

The drain cleaner manufacturers

knew of the danger, yet they did nothing to remedy the problem

until they were hit for damages in a lawsuit brought by a

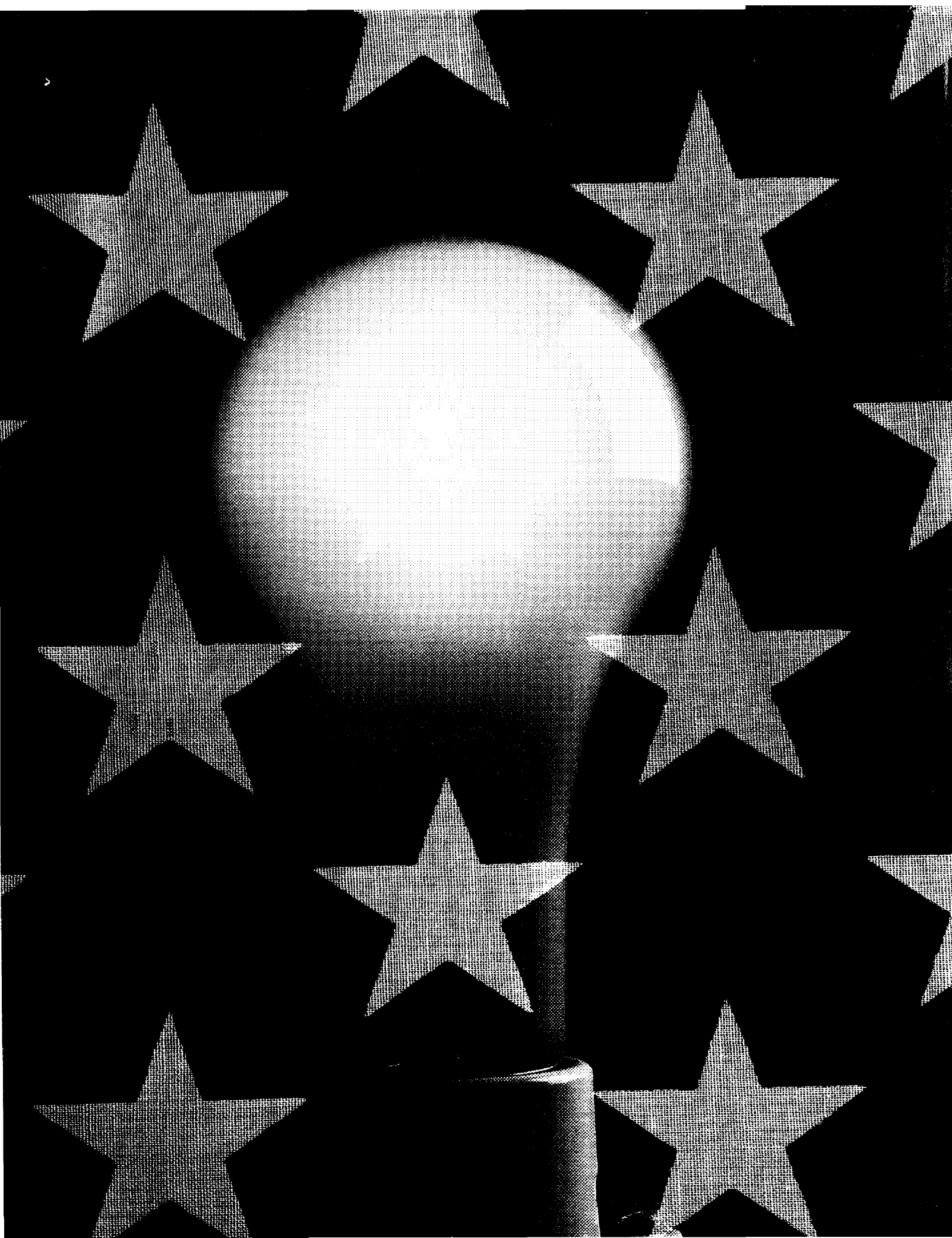
48-year-old housewife who suffered total blindness

when a can exploded in her face.

statute of repose was made stricter, laws of informed consent were eliminated, causes of action for breach of warranty and contract were restricted, and formal presuit notice requirements were imposed. In addition, collateral source benefits were reduced, caps or ceilings were placed on noneconomic damages, attorneys' fees were limited, lump-sum payment of damages above a certain level was mandated, and a mandatory prelitigation screening process was instituted.³⁸

In other actions the Utah legislature abolished joint and several liability and the right of contribution among joint tortfeasors,³⁹ locked the courthouse doors to all but the most severely injured auto accident victims,⁴⁰ and placed restrictions on the award of punitive damages.⁴¹ It further immunized government and its employees against liability for even their nongovernmental activities,⁴² sought to limit the liability of industry for providing defective products⁴³ and, in other ways, moved to restrict the rights and protections afforded to Utah citizens. Unfortunately, Utah is not alone. Such things are happening all over the country.⁴⁴

America tort law results from the reasoned and measured growth of the common law in



decisions that are often fact-specific and fully explored, using real evidence rather than anecdote, and has served well. Lest this system be destroyed, several of its benefits should be considered: the system (1) fosters safety and serves as a deterrent to irresponsible conduct; (2) provides a means for recognition of the sanctity, uniqueness, and worth of the individual; (3) requires wrongdoers to accept responsibility and be accountable for their actions; and (4) can ease the healing process for an injury.

SAFETY AND DETERRENCE

In a 1985 products liability case the Utah Supreme Court said, "The effect of strict liability has been to encourage safer manufacturing practices and product designs, thereby reducing the incidence of death and injury" (*Berry v Beech Aircraft*)⁴⁵ I submit that not only strict liability but the entire tort system has produced a safer environment for the American public.

The reason you hear a warning signal when construction equipment and other types of machinery move backward is because of a lawsuit filed on behalf of an individual plaintiff injured by a vehicle not so equipped.⁴⁶ Many injuries have been prevented by such a simple means.

Drain cleaners used to be marketed in metal cans with screw-on lids. If water got into the can, the interaction with the caustic chemicals caused pressure to build to explosive levels. The drain cleaner manufacturers knew of the danger, yet they did nothing to remedy the problem until they were hit for damages in a lawsuit brought by a 48-year-old housewife who suffered total blindness when a can exploded in her face.⁴⁷ Subsequently the manufacturer substituted a flip-top lid that came off with high pressure.⁴⁸

Many people are familiar with the case that resulted in the recall and redesign of the Ford Pinto automobile.⁴⁹ A woman was killed and a child severely burned when their six-month-old Pinto

automobile stalled on the highway and was hit from behind by a larger car traveling between 28 and 37 MPH. The gas tank was designed and positioned such that an impact of only 20 MPH would cause it to rupture and spray the passenger compartment with gas. A tort lawsuit revealed that the management of Ford Motor company was aware of the danger and was further aware that the danger could be eliminated at a cost of about \$11 per car. The company did a cost-benefit analysis in which it was determined that it would supposedly be cheaper to pay for injuries than to correct the defect. The dangerous vehicle was therefore marketed to the unsuspecting public. Not until Ford realized that tort law provided a way to punish such irresponsibility by hitting the company on its bottom line did the vehicle get recalled.⁵⁰

Other defective and dangerous products have also been removed from the market or modified in the interest of safety due to tort law. It is difficult to compute how many lives have been saved and how much suffering avoided thanks to the demise of the Dalkon Shield,⁵¹ flammable baby clothes,⁵² the tip-over vaporizer,⁵³ the use of asbestos in building construction,⁵⁴ super-absorbent tampons,⁵⁵ etc. The design of machine guards and dead-man switches was not undertaken until someone thought it might make economic good sense.⁵⁶

One-third of manufacturers surveyed by the Conference Board (a

In a market economy, short-term financial interests and public lack of sophistication in determining what is safe will often deter a provider of goods or services from making safety a significant concern. In the short run it is often thought to be cheaper to ignore safety. Tort law restores lost perspective by providing an economic incentive for companies to do the right thing. Society is the beneficiary.

RECOGNITION OF THE SANCTITY, UNIQUENESS, AND WORTH OF THE INDIVIDUAL

A tenet of religious belief among members of the LDS Church states that "no government can exist in peace, except such laws are framed and held inviolate as will secure to each individual the free exercise of conscience, the right and control of property, and the protection of life."⁵⁸ I do not want to be guilty of "wresting" the scriptures to serve improper ends, but I believe that such a statement recognizes the singular importance of the individual in society.

The United States Constitution also makes a significant statement on the importance of the rights of individuals.⁵⁹ Viewed purely as a statement of

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Tort law restores lost perspective by providing an economic
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probusiness organization) reported that product liability concerns led them to improve the safety design of their products.⁶⁰ Health care professionals also acknowledge that, with an eye on the financial threat of a lawsuit, they have—among other things—started sponge and instrument counts and electrical grounding of anesthesia machines and provided padding to shoulder bars on operating tables.⁵⁷

principle, the Bill of Rights acknowledges the worth of the individual. The amendments that resulted from the Civil War further refine those concepts.⁶⁰ I believe tort law, as it has been developed by the courts in the common law tradition, has been true to a philosophy that recognizes and protects the uniqueness of individuals.

When injured clients consult me to determine if they might be represented,

some of their initial questions are often, Do I have a case? What will it cost to pursue it? What is it worth? Because of the respect that the law has for *individuals*, those questions are rarely answerable immediately. Duties and risks, as well as costs, depend on individual circumstances. Cases do not fit very neatly into pigeon holes. Facts change outcomes—and facts are different in every case.

People are not bumpers and fenders. One cannot refer to a table and say that an amputated finger is going for “x dollars” today. Which finger is it? Is the victim a concert violinist? Typist? Singer? Is she old? Young? Pretty? Liability, causation, and damages are highly individualistic. Thus, the initial answers to a client’s burning questions are the same: It depends.

In a personal injury case the court will instruct the jury that in awarding damages they are not to apply any specific formula. Rather, they are to consider the degree and character of a victim’s suffering, both mental and physical, its probable duration and severity, and the extent to which the particular victim may be prevented from pursuing the ordinary affairs of life that he or she has enjoyed.⁶¹

Tort law recognizes the uniqueness and worth of individuals by allowing a court or jury an opportunity to know the individuals involved before passing judgment.

ACCOUNTABILITY OF WRONGDOERS

Many voices today clamor for the adoption of no-fault systems for all forms of tort liability.⁶² Some people want to establish compensation pools financed by potential victims to pay money for injuries without involving the wrongdoers who cause them. Such proposals ignore the obvious value of the principles of personal accountability.

When a would-be tortfeasor is faced with the prospect of having to answer financially for his misdeeds, he is deterred from certain types of conduct. Taking away that incentive would give the wrongdoer license to be irresponsible. Without consequences for our actions, how will we be guided?

Imagine that Megacorporation, the most powerful entity in the community, is debating whether to place an unsafe product into the stream of commerce. Which circumstance is more likely to result in a safe product? (1) The corporation will never

have to answer for its conduct, or (2) it must answer to a group of citizens representing the community where it placed the product.

Some people have argued that having an insurer or indemnitor pay for the wrong all but eliminates personal accountability. I don’t agree. A person’s or entity’s claims history will often have a bearing on the type of insurance that is obtainable, its cost, and its availability—just ask a drunk driver.

I suggest that a key to preserving the salutary effects of the principles of personal accountability in tort law is to protect the contingent-fee system. A marvel of our day is the way in which the law permits the Davids of society to keep the Goliaths in check. An American tradition allows a victim to obtain legal counsel by paying a percentage of any amount he may recover. This allowance provides the “key to the courthouse” for thousands whose circumstances would otherwise deny them access to legal remedies. Greed and power are checked and rendered less dangerous when there is accountability.

HEALING OF THE WHOLE INJURY

If all my opinions about the benefits of tort law, the one that might draw the sharpest criticism is the suggestion that a lawsuit can help to “heal” the victim of an injury. I am acutely aware that there are doctors who contend that their patients do not get better until the suit ends. Insurance companies express sarcastic wonder at what they call the remarkable healing powers of the “greenback poultice.” “Just throw money at the victim and the pain goes away,” they say.

However, from my point of view I see people who have had more than their bodies hurt. They have suffered tremendous indignities, often inflicted callously by people whom they really trusted. They try to understand what happened and are rebuffed or ignored. Insult is added to injury. Sometimes they come to me simply to find out what happened.

“We asked the doctor how mom could die so suddenly when everything seemed okay, and he just shrugged and walked away,” they say, or “The doctor won’t return my calls, and I don’t think it’s right that I’m blind from surgery on my arm.”

These people are frustrated—sometimes angry—and hungry for an acceptable explanation.

tion for what happened. Tort law, administered according to the Rules of Procedure and Evidence, can provide an opportunity for the sword of anger and frustration to be laid down. Legitimate questions cannot be ignored in a lawsuit, and the accuracy of answers can be tested against principles established by experts.

I have had several clients who seemed consumed by their cases—until their depositions were taken. The cathartic effect of simply telling their story to someone who listened and didn't interrupt seemed to have a therapeutic effect. Once having testified, they seemed to calm down.

Oliver Wendell Holmes said that a lawsuit was a substitute for private vengeance.⁶³ I submit that often in an environment of decorum and respect, of rules and structure, a victim's anger and frustration can dissipate. In the time it takes a case to wend its way through the system, passions can cool and hostility can abate, not while being ignored, but while being attended to. The lawyer is thus a participant in a process that can sometimes heal gaping social wounds.

Furthermore, obtaining a damage award can have a major therapeutic effect on a person who is injured. He can finally pay the bills that have been piling up. She can finally get the medical care that she has been putting off. He can quit worrying about how to feed the family. She can stop depending on her mother for help. That is what compensation is for—to try to restore to a victim what was lost because of an injury wrongfully inflicted by someone or something else.

CONCLUSION

A distinguished lawyer whom I greatly respect recently told me that before I finished practicing law, the tort system, as I knew it, would be changed beyond recognition. He forecasted the adoption of a decision matrix akin to the sentencing guidelines used in federal criminal law. He predicted the end of the jury trial and the establishment of administrative mechanisms for handling all injury claims.

I wanted to ask: What about fairness? What about justice? What about the Constitution? I hope that people much brighter than I will be able to articulate good, persuasive reasons for holding on to a tort law system that has met the needs of an ever-changing society. I also hope that among those who help to preserve our tort law system will be students of the J. Reuben Clark Law School.

Notes

- 1 W. Keeton, **Prosser and Keeton on the Law of Torts** 2 (5th ed. 1984).
- 2 *Id.* at 1.
- 3 Hunt, *Damage Suits: A Primrose Path to Immorality*, *Harper's Mag.*, Jan. 1957, at 67, 70.
- 4 Praeger, *Computation of Damages in Personal Injury Cases*, 1955 **Kan. L. Rev.** 91.
- 5 See e.g., *Matthew* 6:14-15; 3 *Nephi* 12:14-15; *D&C* 64:8-9; *Matthew* 5:39; 3 *Nephi* 12:39; 1 *Corinthians* 6:7.
- 6 *D&C* 134:11.
- 7 *D&C* 98:5-10.
- 8 F. Harper, F. James, Jr. & O. Gray, *Introduction to the First Edition of 1 The Law of Torts* at xli, xliii (2d ed. 1986).
- 9 *Id.* at §§ 21-4, 22-1.
- 10 Page, Book Review, *Deforming Tort Reform*, 78 **Geo. L.J.** 649, 661 (1990).
- 11 W. Keeton, *supra* note 1, at § 67.
- 12 *Id.* at §§ 97-99.
- 13 Juenger, *Symposium: Conflict of Laws and Complex Litigation Issues in Mass Tort Litigation: Mass Disasters and the Conflict of Laws*, 1989 **U. Ill. L. Rev.** 105.
- 14 Note, *The Proper Application of Judicial Decisions Overruling Established Tort Doctrines*, 65 **B.U.L. Rev.** 315, 323, 344 (1985).
- 15 Annotation, *Malpractice Test: Competency of Physician or Surgeon from One Locality to Testify, in Malpractice Cases, as to the Standard of Care Required of a Defendant Practicing in Another Locality*, 37 **A.L.R.** 3d 420, 426 (1971).
- 16 J. Lieberman, *The Litigious Society* 82-85 (1983).
- 17 Multiple references to articles on the subject appear in a publication of the Association of Trial Lawyers of America, entitled: "Justice for All," published during the 1987-1988 presidential term of Eugene I. Pavalon. See also 132 **Cong. Record** 38, *Solutions to the Liability Insurance Crisis*, remarks by Congressman LaFalce, before the 99th Congress, March 25, 1986. The attorneys general of several states have filed a lawsuit against several insurers alleging that a nationwide conspiracy to cut competition and increase prices was the source of the "liability crisis." See, *Was There a Liability Crisis?*, **ABA J.**, at 46 (January 1989).
- 18 **Utah Code Ann.** § 78-14-1, et seq.
- 19 *Id.* at § 78-15-1, et seq.
- 20 *Id.* at §§ 78-27-52 to 55.
- 21 *Id.* at § 31A-22-309.
- 22 *Id.* at §§ 78-27-37 to 43.
- 23 *Id.* at § 78-18-1, et seq.
- 24 *Id.* § 63-30-1, et seq.
- 25 *Id.* § 78-14-4 to 16.
- 26 *Id.* at § 78-27-40.
- 27 *Supra* note 27.
- 28 **Utah Code Ann.** § 78-18-1.
- 29 *Id.* at § 63-30-2(4).

The notes have been edited for space considerations. Complete documentation is available from the author.

Reflections on a
CHANGING

Graduation should be mostly

a time for looking ahead.

But when you invite a retiring

teacher to speak, you assume the

risk of some nostalgic

reflections.

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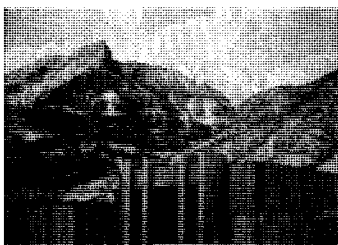
INETEEN YEARS AGO THIS SPRING

Carl S. Hawkins

I was pondering a difficult decision whether or not to leave Michigan. Two considerations finally persuaded me to accept an invitation to join the faculty of the newly

created J. Reuben Clark Law School. The first was the assurance that planning and leadership for the new Law School had been entrusted to Dallin Oaks and Rex Lee, who knew what a good law school

should be. The second was the realization that this would be a rare opportunity to contribute to the character of an institution that would last beyond my lifetime.





My family and I were happy in Ann Arbor, and we had no desire to leave there, either for personal or professional reasons. But the University of Michigan Law School was a great institution before I came there and would continue to be so if I left. At BYU there would be an opportunity that might come only once in a lifetime, to help establish a new institution.

It is satisfying now to reflect upon what has been accomplished here. I need not dwell upon the more obvious and tangible achievements in recruiting a competent faculty, attracting qualified students, establishing the library, dedicating the new building, qualifying for accreditation by the American Bar Association and for membership in the Association of American Law Schools and the Order of the Coif, and graduating nearly 2,500 students, most of whom have passed the bar and are serving competently in a wide variety of professional positions, as well as giving valuable service to their communities and their church. It is equally satisfying to reflect on the faculty's scholarly production and their service to the university, the public, and the Church.

But today I would like to speak of some accomplishments that are less tangible and less likely to be noticed or remembered.

First, it has been a noteworthy accomplishment that the educational objectives of the Law School have been established within the mainstream of American legal education, so as to enjoy academic and professional credibility. On the face of it, that may not sound like much to boast about—that the Law School should have been established as a sound educational institution. But those who are old enough to remember some of the things that were said after plans for the Law School were announced will understand that there was some risk that this institution could have been started in a different direction.

Some people made public statements proclaiming that the mission of this new Law School should be to inculcate particular political values or ideology. I shall avoid labeling or characterizing that political ideology, not only because such labels involve a high risk of being misunderstood, but also because the label is not necessary for my point, which is to celebrate the fact that the Law School successfully resisted the imposition of any political agenda.

Those statements proclaiming a political agenda for the Law School were not made by members of the Board of Trustees or by any officials who had the responsibility to define policy or purpose for the Law School. But they were made by well-meaning persons who hoped to influence the course of the Law School in the direction of political values that they sincerely believed were responsive to important religious principles.

If they had succeeded, the consequences would have been tragic, because they would have been self-defeating. A law school pursuing a political agenda would never have gained professional or academic credibility. But even worse, its graduates could not have acquired the knowledge and professional skill to become effective advocates in the service of any

cause. Hugh Nibley has reminded us of Joseph Smith's teaching about the danger of zeal without knowledge. Nibley explained it this way:

The young, with their limited knowledge, are particularly susceptible to excessive zeal. Why do it the hard way, they ask at BYU, when God has given us the answer book? The answer to that is, because if you use the answer book for your Latin or your math, or [the law] . . . , you will always have a false sense of power and never learn the real thing. [Hugh W. Nibley, *Nibley on the Timely and the Timeless*, (Salt Lake City: Bookcraft, 1978), p. 268]

In this instance, the risk of misdirection was avoided when the Law School was entrusted to the hands of competent professionals, especially Dallin Oaks and Rex Lee, whose religious and political values could not be impugned, but who were firmly committed to the need for sound legal education to produce competent lawyers rather than political zealots. Those of us who provided some moral support in resisting the political pressures and some technical support in building a solid curriculum may now understandably look back with some satisfaction on what has been accomplished.

And you graduates should also be glad that your law school credentials were credible enough to open the door to the professional opportunities you now have, and that your legal education was sound enough to give you a fair chance to succeed.

A different kind of conflict, between the competing objectives of the scholar and the practicing lawyer, also had to be confronted in establishing the Law School's educational agenda. There were those whose distrust of academicians led them to urge that the Law School's agenda, and therefore its faculty, should be dominated by practicing lawyers.

The competing objectives of the profession and the academy have always been with us in American legal education. The problem is not resolved by some simplistic notion of "balance," because that suggests a kind of static compromise. The experience of good American law schools has shown that a dynamic tension is needed, in which the curriculum is continually reexamined and regenerated in response to the competing demands of theory and practice.

The J. Reuben Clark Law School started under that kind of dynamic tension with the appointment of a faculty whose experience reflected the best of both competing objectives. There were lawyers' lawyers, like Rex Lee, Woody Deem, and Terry Crapo, who still had the academic credentials to assure their appreciation for scholarly values. And there were established law teachers and scholars, like Ed Kimball, Doug Parker, and Carl Hawkins, whose experience confirmed their respect for the realities of legal practice.

While there is cause for satisfaction in these things, there is surely no cause for complacency.

It is well that a political agenda was avoided. But we must still recognize that the traditional law school curriculum reflects an implicit bias in favor of the established social and economic orders. We need not apologize for that, but we must make sure that it does not leave our students insensitive to social or economic injustice, and that it does not deprive

them of the passion and the creative energy needed to become effective advocates for remedial change

One way in which we do this is to continue striving for greater diversity in our faculty and student body. You should know that our conscientious efforts in this regard have not been driven by political pressure nor by faddish notions about the need to empower disadvantaged groups. Instead we have been motivated by our belief that good legal education must take into account the diversity of interests in our free and pluralistic society so that our graduates may render more effective professional service to that society. We have a long way yet to go before that task is completed.

We may also take satisfaction in the fact that we have not allowed our curriculum to be dominated by either practice or theory, but we cannot complacently assume that we have found the right accommodation between those competing demands. I believe that our efforts to teach legal theory still give too much emphasis to formal rules and abstract doctrine and do not go nearly far enough toward developing explanatory theory and basic ordering of ideas. We have developed innovative ways to teach practice skills through simulation exercises, but we still have a long way to go before we can be satisfied that we are giving our students the technical skills needed for effective lawyering, as well as the deep insights into how those skills should be used in the service of a just society.

I would like to speak also of one other intangible or less obvious accomplishment that has to do with faculty collegial relations.

When I began teaching at the University of Michigan Law School, I was immediately accepted as a full partner in the faculty. Colleagues adjusted their teaching assignments to make room for me to explore and develop my interests. I was given important committee assignments and an equal voice and equal vote in faculty meetings. Faculty rank was never invoked to impose some kind of junior status upon me.

A colleague who was teaching the Legal Education Seminar for graduate students invited me to share that responsibility with him, thereby introducing me to the basic issues and literature of legal education without implying some demeaning apprenticeship.

Another colleague put me in touch with a lawyer who was looking for a coauthor to revise his treatise on Michigan civil procedure. This led to a relationship that produced a seven-volume treatise and many valuable opportunities for professional development.

A former teacher invited me join with him and

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If you would
find a life in
the law, you
must lose
yourself in
professional
service to
others
through
the law

Aggressive
or ambitious
pursuit of
self-interest
in this
profession
is likely to
be self-
defeating in
the long run.

•

several others in producing a new edition of their torts casebook. These established scholars accepted me as an instant colleague and nurtured a relationship that resulted in my becoming the managing editor on two later editions of our two casebooks.

I gradually realized that these were not extraordinary measures for the training of a new faculty member, but were part of an institutional tradition of mutual support among faculty colleagues. I began to appreciate that this support entailed reciprocal obligations.

The opportunity to find and develop my own teaching and scholarly interests implied reciprocal obligations to accommodate my colleagues' efforts to do the same, to support and encourage their research efforts, to share institutional resources unselfishly, and to make my professional contacts available in aid of their professional development.

The privilege to participate in faculty self-governance implied an obligation to accept my share of committee and administrative assignments.

The privilege of an equal voice in faculty affairs implied reciprocal obligations to prepare and exercise that privilege conscientiously, to listen to and respect the voice of colleagues, and to subordinate my self-interest occasionally to institutional goals as defined by the faculty.

If this description of faculty relations sounds idealistic, I can only reaffirm that I experienced it at one of the nation's great state universities.

I came to BYU in 1973 hoping that I might help to establish this same collegial tradition in the new Law School, and I think we have largely succeeded. This spirit of mutual support among faculty colleagues should flourish at BYU. While I know that it can be sustained elsewhere as an academic tradition of enlightened self-interest, it should prevail here from even higher motivations, as an application of the Golden Rule or of the Savior's grand paradox that we must lose our lives in order to find them.

I believe I prize as highly as any here the philosophical and political values of individual autonomy. But I have learned from experience that in academic life individualism paradoxically flourishes better where some of its more strident claims are voluntarily subordinated out of concern for the group and for institutional objectives, just as group power and collective solidarity are strengthened when the group liberally relinquishes most of its demands for conformity and loyalty in order to help its members define and pursue their individual goals.

This is, I believe, a secular application of that grand paradox of life that Jesus taught,

"For whosoever will save his life shall lose it: and whosoever will lose his life for my sake shall find it" (Matthew 16:25)

I hope that this tradition of faculty collegiality will continue to sustain the J Reuben Clark Law School through succeeding generations of teachers and students

There is also a message in this for you graduates. If you would find a life in the law, you must lose yourself in professional service to others through the law. Aggressive or ambitious pursuit of self-interest in this profession is likely to be self-defeating in the long run. You may gain position or power or prestige, but you may also lose your self-respect, and you will surely fail to find your life fulfilled in your work. It is no small thing to reflect on your professional career and be able to say that you have labored in the service of something worthwhile and that you have found joy in your work.



When I was asked to consult with the planning committee, I advised them against starting a law school at BYU, because I thought that there were more pressing needs for the Church's education dollars. But when the decision was made to establish the Law School, my main concern was that it should become a good law school. That seemed to me a sufficient cause in which to labor, even though I lacked a clear vision of some special mission for this institution. Now, perhaps, the time has come to step aside and make room for those who have a clearer vision, or at least for those who have fresh ideas, and the energy and enthusiasm to pursue them.

This address was delivered at April convocation, 1991.



Carl S. Hawkins "A man whose judgment is always unerring, always the best"

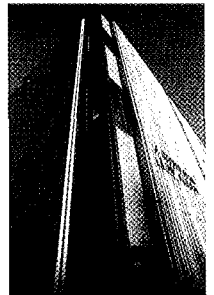
The retirement of Professor Carl Hawkins from the full-time faculty of the J Reuben Clark Law School marks an important transition in the life of one of the school's leading scholars and in the life of the school itself. Professor Hawkins will go on to conduct research, teach occasional courses, and engage in some of life's more sublime pursuits as a professor emeritus of law, and the Law School will attempt to adjust to the absence of one of its most respected and distinguished influences. A member of the initial faculty of the J. Reuben Clark Law School, Professor Hawkins served as both acting dean and dean of the Law School in subsequent years. Before coming to BYU, Professor Hawkins served on



the faculty of the University of Michigan Law School from 1957 to 1973. Leaving his position at that prestigious institution to join a fledgling law school was as much an act of faith as it was a once-in-a-lifetime opportunity. University President and founding Law School Dean Rex Lee has called the decision of

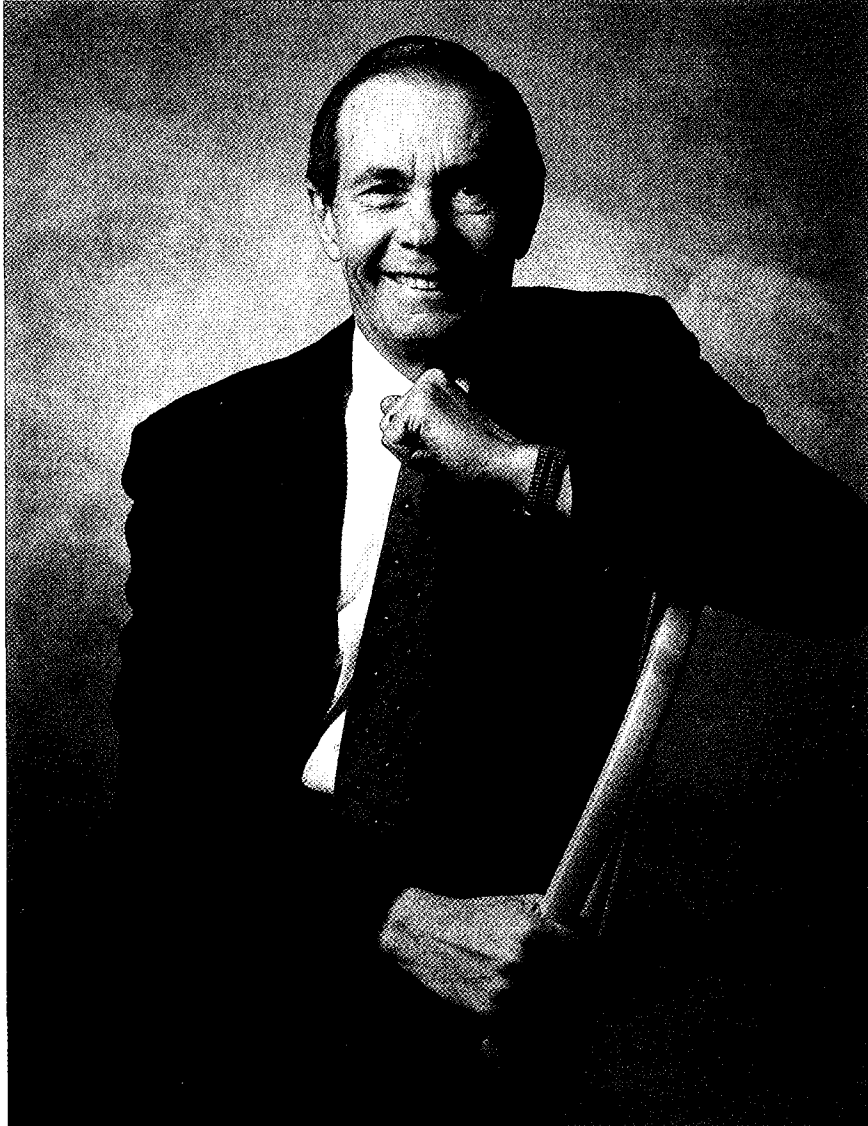
Professor Hawkins to join the Law School "the critical event" in the year after Lee was appointed dean. "It was clear from the beginning that the quality of our initial faculty was the single most important factor affecting the success of the Law School," according to President Lee. "With the right faculty, we would be able to attract good students and the acceptance of the profession. Without them, the school would

be a lost cause. But there were so few Mormon law teachers of national stature that I quickly saw one man as the key to what other faculty prospects would do. That man was Carl Hawkins." In the early days of the Law School, Dean Lee would often talk over tough issues with Professor Hawkins, "a man whose judgment is always unerring, always the best." Former Michigan Law School Dean Frank Allen once told University Provost Bruce Hafen "The day Carl left here for BYU, we all knew BYU would be a first-rate school." So important was the decision of Professor Hawkins to come to BYU that upon receiving confirmation of Hawkins' decision, former BYU president and current member of the Quorum of the Twelve Dallin H. Oaks told Lee and Hafen "I guess the Lord really wants this law school; I guess he really wants it to be a good one." Professor Hawkins' deanship marked a period of growth and maturity for the Law School. From 1980 to 1985, Dean Hawkins guided the school to accreditation by the Association of American Law Schools, increased the faculty to its full size, and saw the Law School accepted into the Order of the Coif. While Professor Hawkins doubts the individual importance of such events that occurred on his watch, he does emphasize their importance as evidence of the growth and improvement of the Law School. "I was dean when much of the growth and development here came to a natural fruition. Of course, credit for that has to be shared with Dean Rex Lee and the first faculty." At a dinner held in honor of the retirement of Professor Hawkins and Professor Douglas Parker, Provost Hafen made the following remarks: "For most of us, the institution [the J. Reuben Clark Law School] has made us better; for these two, they have made the institution better. Each gave his professional life to the Law School. Who will show us the way in the future as they did in the past when the going was much more difficult?" While the retirement of Professor Hawkins may leave the Law School without the full-time contribution of one of its most eminent voices, Professor Hawkins' efforts to establish and perpetuate a strong academic tradition within the J. Reuben Clark Law School will continue to be felt. His dedication to ideological independence, faculty collegiality, and academic performance has served the Law School well, and his commitment to superior law teaching and scholarship will continue as an example of excellence for future students and professors.



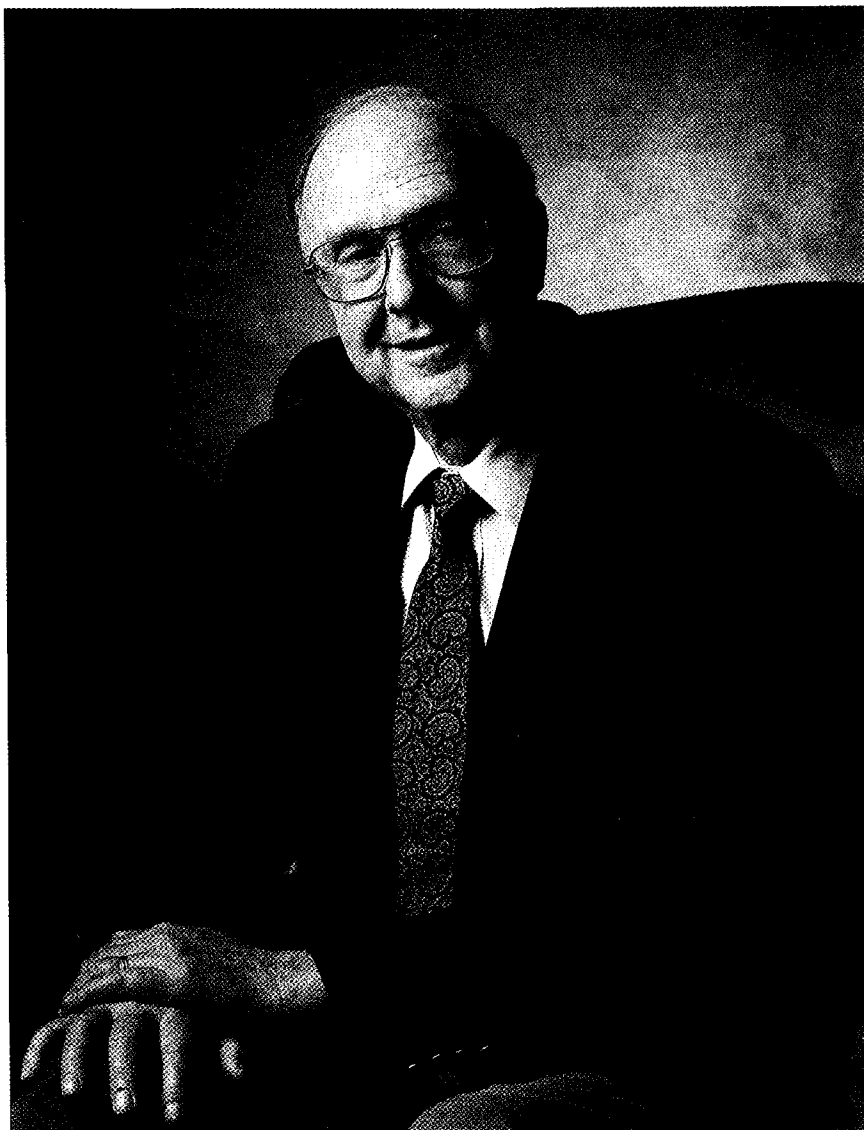
*The following portraits of the school's deans, taken in 1991,
will be on permanent display at the J. Reuben Clark Law School Building.*

PHOTOGRAPHS BY JOHN SNYDER



REX E. LEE

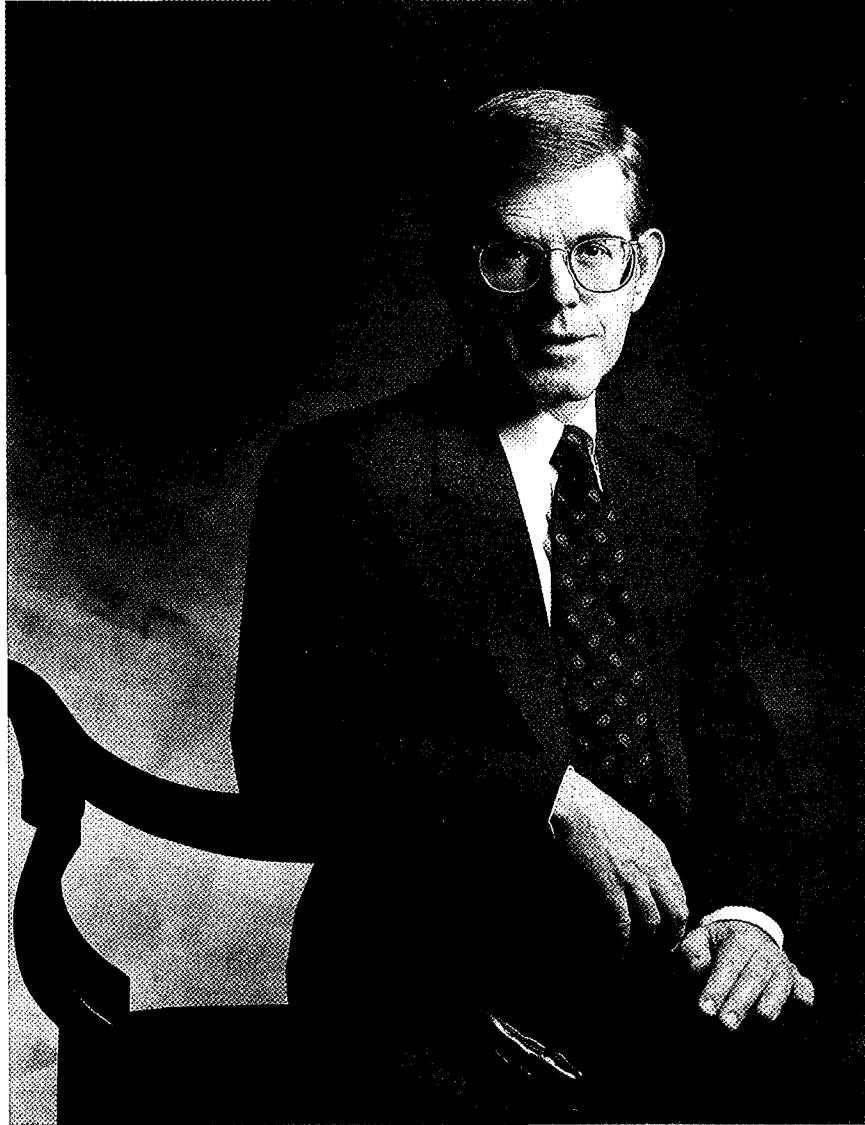
Dean, 1971–1981



CARL S. HAWKINS

Acting Dean, 1975–1977

Dean, 1981–1985



BRUCE HAFEN

Dean, 1985–1989



H. REESE HANSEN

Acting Dean, 1989–1990

Dean, 1990–present

Doug Parker

After a career in legal education spanning nearly 40 years, a pioneering member of the Law School faculty has retired

Professor Parker came to the Law School in 1975 from the University of Colorado School of Law. He had been asked to join the initial faculty of the Law School in 1973, but he remained in Boulder an additional two years to fulfill various professional obligations. Although Professor Parker did agree to come, his initial reaction to the prospect of leaving Colorado for the new law school at BYU was hostile. "I had a difficult time with the idea because a number of BYU professors had come to Colorado for advanced study and spoken freely about the BYU atmosphere—which to me wasn't very appealing," said Professor Parker. "I was totally committed to the academic freedom and pluralism at Colorado, and I presumed it would not be the same at BYU."

The search committee contacted Professor Parker when they were looking for the first dean. Later, when President Rex Lee was appointed founding dean, he went to Colorado to speak to Professor Parker about joining the faculty. After returning from this trip, two impressions from that first meeting remained with President Lee. "I came away convinced that this was a man who had achieved a deep relationship with his Heavenly Father and that if it were true that we needed another dimension at the Law School, we had to have Doug Parker."

Although President Lee had determined the need for someone of Professor Parker's spiritual sensitivity, Professor Parker was still opposed to the idea of joining the faculty. "For some reason, I had some considerable hostility about coming. The thought of coming filled me with some kind of deep anger. But I had a rather remarkable experience, a deeply spiritual experience, which put all of my hostility

to rest." One evening, while walking in the dark along the mesa above his home in Boulder, Professor Parker stopped to pray about his decision and about some of his own ill feelings toward a Church leader whom he thought had given him a negative recommendation to the faculty committee. "I had this extraordinarily comforting experience, almost as if someone told me it was none of my business what was in

the recommendation and not to be concerned about going to BYU at all."

Although the experience on the mesa cleared the way emotionally for Professor Parker to come to BYU, he left behind at Colorado a faculty and a law school he loved and respected. Professor Parker had joined the faculty at the University of Colorado in 1953, after receiving his JD from the University of Utah in 1952.



and teaching one year at the University of Chicago. It was while attending the 1953 meetings of the Association of American Law Schools that the 27-year-old teaching fellow met Ed King, then dean of the law school at Colorado. After receiving a strong recommendation by Edward Levi, dean of the Chicago Law School, Professor Parker was hired to teach courses in civil procedure and wills.

During his 22 years at Colorado, Professor Parker went through a process of finding himself intellectually and identifying those academic subjects he would eventually come to love. In addition to his work with civil procedure and wills, including the Bow-Parker revision of *Page on Wills*, he began teaching legal philosophy. Moreover, he began to understand how better to relate to people and learned to reverse some of his earlier, uninformed opinions. "Developing relationships with people where it was not under any religious or institutional auspices became very important to me," said Professor Parker. Because of his close relationships with other members of the faculty and his unassuming spirituality, the law school community often turned to Professor Parker in moments of difficulty and crisis. He was asked to address a memorial convocation in honor of a respected dean who had passed away, and he organized an informal support group for another retired dean who had been hospitalized for an extended period of time. "All that deserves to be called sacred about my career involves passionate, loving interac-

tion with colleagues," recalled Professor Parker at his recent retirement dinner.

Sincere concern for his colleagues continued after Professor Parker joined the Brigham Young University faculty in 1975. While in the process of deciding whether to come to BYU, Professor Parker spoke with another faculty member who had decided to come to Provo, Professor Carl Hawkins. After discussing the physical facilities, the library, and the recruitment efforts of the faculty and students, Professor Hawkins was surprised by Professor Parker's primary concern. "After a few moments of reflection he said, 'But what about the personal relationships? I love the work I do, but I can't be fulfilled without the relationships with other people. I want to know whether you have observed enough people who have shared the same sort of thing.'" Professor Parker's years at the Law School have been a testament to his concern for personal relationships borne out in that early conversation. Throughout the years he has continued to consciously foster warm and loving relationships with many students and faculty. His example has been one of concern for others, always seeking to uplift those around him.

At the Law School Professor Parker continued teaching legal philosophy and added courses in Roman law, Jewish law, and federal Indian law. "I owe a sincere debt of gratitude to the subjects I have taught. They have provided me a continuing awakening, a progressing rebirth. I have loved the subjects, and I pay those

subjects my thanks," he said recently, paying tribute to his courses and their leading thinkers the same as he would to an influential person in his life. "If their impact on the living is as great as the influence of great people now living, why should time exclude them from the expression of gratitude?"

Professor Parker was honored by the university in 1986 with the Karl G. Maeser Distinguished Teaching Award in recognition of his superior teaching skills, the first law professor so honored. In presenting the award, President Jeffrey Holland emphasized Professor Parker's efforts to develop new courses at the Law School in American Indian law and Jewish law.

In the years since Professor Parker began teaching, the nature of university life has changed remarkably. "Law schools and universities are vastly more complex than they were," according to Professor Parker. "The demands on deans and faculty are immeasurably greater." He attributes the increased complexity to the rapid acceleration of the growth of knowledge, pointing out that complete law courses have been developed from what were once single lectures within larger topics. "Law school was more leisurely for both students and faculty back then—we now have twice the curriculum to teach in the same three years." The changes have brought less institutional commitment, increased conflicts among students, faculty, and administration, and decreased time available for building bridges among different groups.

"Professors don't get out of their offices enough. The demands of course preparation, writing, and counseling students bolt them to their desks. They need to be a part of the university community and break bread with a wider circle of faculty colleagues," according to Professor Parker. His own ties to the larger BYU community are a result of his strong friendships with faculty members in many campus departments.

Professor Parker has witnessed the growth of the Law School from almost its very beginning. He has been an important part of that growth, and his impact will long be felt by students, faculty, and staff. As the Law School continues to mature, he would warn us against formality in relationships and insulation from one another. "If, as a Law School, we lose our soul while coming of age, we will have lost indeed." As we strive to emulate the compassion, kindness, and love that made Dean Lee call Doug Parker "a man who is very close to God," these traits will be his most lasting contribution to our community.

Dean Hansen Travels to Eastern Europe with CEELI

Dean H. Reese Hansen traveled to Poland and Yugoslavia during April as a member of an ABA-sponsored team of law school deans to meet with counterparts from Eastern European law schools. During their April 14–20 trip, the eight deans traveled to Belgrade and Warsaw, meeting with deans from 27 Yugoslav and Polish law schools.

The Central and East European Legal Initiative (CEELI) was formed by the ABA to facilitate the process of legal reform now underway in the countries of Central and Eastern Europe. The program is designed to provide U.S. expertise and assistance to those countries currently modifying and reforming their legal systems. In addition to workshops on technical legal assistance, exchanges of legal practitioners, and publications covering legal innovations, reforms in legal education are receiving considerable emphasis. CEELI plans to identify a sister law school in the United States for each participating European school. The visit of the U.S. deans was the first step in establishing these relationships.

Dean Hansen felt the visit was incredibly interesting and informative. "The people we talked with have lived their entire lives under the old Communist system. They recognize their tremendous need for information and resources to reform their legal systems within their own countries." The ABA, under the guidance of Supreme Court Justice Sandra Day O'Connor, is attempting to provide some of those resources through the CEELI program, according to Dean Hansen. "The immediate needs of the Eastern European schools make our help truly vital. While long-term benefits will certainly accrue to both sides of the exchange, the preoccupying needs of the Eastern European schools in the areas of curriculum development, teaching methods, and resources are crucial to the current stage of adjustment."

Representatives of the par-

ticipating Yugoslav and Polish law schools identified several problems with which their American counterparts could be of assistance. The most pressing needs lie in curriculum development, given the schools' lack of experience with legal concepts important for democracy, private property ownership, and a market economy. Capital ownership, business law, and securities regulation are no longer considered notions of western imperialism; now they have become important topics of discussion as individual enterprise, private corporations, and stock markets emerge throughout the region. Curriculum reform also includes discussion of the basic constitutional changes necessary to transform out-of-date political systems into modern democracies. Difficulties in obtaining materials and faculty members familiar with topics other than traditional Marxist-Leninist thought slow the pace of curriculum change. It is hoped that closer contact with U.S. law schools will increase the flow of ideas and quicken the rate of adoption of legal principles needed by these young democracies.

Dean Hansen and the other members of the ABA team met with government officials and dignitaries as well as with administrators, faculty, and students of the East European law schools. The group's activities were given prominent treatment by local media, and the director of the Belgrade office of the United States Information Agency said the workshops were "the most successful project that he had thus far been involved

with in Yugoslavia."

Receptions for the team of observers were given at the U.S. embassies in both Belgrade and Warsaw.

The second portion of the CEELI sister school program will be a visit by Yugoslav and Polish law school deans to the United States. After an initial orientation and overview of American law to be held in Washington, D.C., the deans will make on-site, in-depth visits to U.S. law schools. Each group of deans will be hosted by a principal U.S. host dean as well as by several individual host deans. Dean Hansen has been asked to serve as the principal host dean in this area of the country. A group of three to five Eastern European deans will visit the J. Reuben Clark Law School to observe its facilities and review its curriculum. "They will likely be interested in the library and its technological innovations, and they will want to see how our classes are conducted as well," according to Dean Hansen. In addition, group members will visit other law schools in the region to gain a broader view of legal education. They plan to visit a state-run law school and possibly another private law school to view the differences in approach and administration.

Donation of Lincoln Bust

George M. Turner, BA, MA, BYU, 1959, 1960; JD, UCLA, 1968, recently donated a heroic bust of Abraham Lincoln sculpted by Emil Seletz MD, neurosurgeon and sculptor, to the Law School. The bust is majestic, but its importance to the Law School is

increased by the association of both donor and sculptor to the school. As a graduate of Brigham Young University, George has followed the development of the Law School with interest. He wanted to enrich the Law School and to introduce Dean H. Reese Hansen to the sculptor.

Emil Seletz has long been a client of George Turner. The attorney-client relationship has developed into a close, personal friendship over the past 20 years. George became aware that Dr. Seletz was also a sculptor while visiting Dr. Seletz's home in Los Angeles. He knew that if Dean Hansen met Dr. Seletz he would value the bust of Lincoln even more.

While visiting the area to attend the annual dinner of the Los Angeles Chapter of the J. Reuben Clark Law Society, Dean Hansen and his wife, Kathryn, accompanied George Turner to Dr. Seletz's home. They were escorted first to the patio in back and then through his large studio to view more than 50 heroic busts—of Lincoln, Will Rogers, Mark Twain, Beethoven, Ben Gurion, Einstein, and notable physicians from the United States and abroad. Some of the busts on the patio had been expertly cast; others remained in the original clay. Even at 90, Dr.

Seletz works each day in his studio or on his patio, depending on the weather. He has at least a dozen current works in various stages of completion and maintains that working on them keeps him alive because there are always projects to complete.

Dr. Seletz explained that as a boy growing up in



Emil Seletz, MD, neurosurgeon and sculptor, in his California studio

Chicago he enjoyed whittling and carving toys and wanted to become a sculptor. However, his mother wanted him to study medicine. While attending medical school Dr. Seletz visited Washington, D.C., where he was impressed by a head of Lincoln by Gutzon Borglum. This rekindled his desire to sculpt and to focus on Lincoln. He started sculpting heads in his room while doing his internship at the old Los Angeles County General Hospital. His first major piece was completed in 1937, and for over 54 years he has sculpted several busts of Lincoln at various periods of the president's life.

Dr. Seletz kept up his sculpting throughout his distinguished medical career, which included time as chief of neurosurgery at Cedars-Sinai Medical Center, senior attending neurological surgeon to the Los Angeles County General Hospital, and assistant professor of neurosurgery at the University of California School of Medicine. During this time he also became a

medical writer of some renown.

The Seletz family was extremely close. Dr. Seletz practiced neurosurgery with his sister Rachel for over 40 years. His sister Jeanette, a writer, shared his interest in Lincoln. She encouraged her brother to sculpt, in her words, "the deeply concerned, vulnerable man, the Lincoln who found human suffering intolerable, slavery unthinkable, bigotry inadmissible, and love of man for his brother the purest form of religion."

It is this Lincoln whom Emil Seletz has spent a lifetime sculpting. It is this Lincoln who, thanks to George Turner, will inspire students of the J. Reuben Clark Law School in the years to come.

The J. Reuben Clark Law Society Celebrates Its Fourth Anniversary

As the J. Reuben Clark Law Society celebrates its fourth anniversary this November, recent events in chapters

across the country witness the increasing strength of the organization. Chapters are now firmly established in Washington, D.C., Los Angeles, Orange County, Phoenix, Northern California, Portland, and Denver, and initial steps toward organization have been taken in Dallas, Houston, and Seattle. Each chapter has its own distinct personality while sharing the goals of the national organization: (1) public service; (2) loyalty to the rule of law and to the Constitution of the United States; and (3) appreciation for the religious dimension in both American society and in lawyers' personal lives. The following events in several of the chapters indicate the range of activities taking place.

Northern California Chapter

The Northern California Chapter held its inaugural dinner on July 13, 1990, in San Francisco under the capable direction of William E. Mussman and Gary S. Anderson and their committee, made up of Bill Atkin,

Bill Mussman III, Garth Pickett, Lon Packard, Keith Petty, Quentin Cook, Dayton Call, and Richard Fitt. The elegant dinner was held at the Old Federal Reserve annex of the Park Hyatt Hotel in San Francisco. Over 160 law society members and friends of "Czar" Kirkham were in attendance, and some had driven more than 200 miles to attend.

The highlight of the evening was the announcement of the Francis R. "Czar" Kirkham Professorship to be established at the Law School. Dean H. Reese Hansen, Provost Bruce C. Hafen, and President Rex E. Lee all spoke, and Francis Kirkham was honored by his former partner at Pillsbury, Madison & Sutro, Jim O'Brien. Jim, who is also a retired officer and director of Chevron, was largely responsible for the donations made to the professorship by the Pillsbury firm and Chevron.

Los Angeles Chapter

On June 21, 1991, the Los Angeles Chapter of the J. Reuben Clark Law School held its third annual dinner at the Burbank Hilton Hotel. The dinner was organized under the direction of chair Don M. Pearson and committee members Douglas L. Callister, Lynn O. Poulson, Douglas M. Rawlings, Nancy Van Slooten, Victor Walch, and John Watkins.

Don Pearson was recently selected by the national board of the J. Reuben Clark Law Society to replace John S. Welch as chapter chair. The inspiring leadership and fund-raising capabilities of John S. Welch, the founding

chair of the chapter, were acknowledged by Douglas L. Callister, who presented John with a gift from members prior to his departure to serve a teaching mission at BYU—Hawaii.

The Southern California Mormon Choir was also honored at the dinner. Organized in 1951, the choir has been a great support to the LDS community in Southern California at stake and regional conferences as well as at civic and cultural events. The choir performed a short patriotic program, after which Elder John Carmack spoke. Elder Carmack had formerly served as choir president while president of the Los Angeles Stake. He was also one of the original members of the J. Reuben Clark Law School board of visitors while practicing law in Los Angeles before his call as a member of the First Quorum of Seventy on April 7, 1984.

Drawing on his experience as executive director of the Church Historical Department, Elder Carmack talked about "The Hoffman Case and the Church Historical Department." He shared information about Mark Hoffman, his methods, and his motives. He also corrected misinformation about Church leaders which was circulating at the time of the investigation and trial. Of particular interest was a discussion of the role of several lawyers, whose insistence on proper procedures in the transfer of documents led to the uncovering of Hoffman's fraud. Elder Carmack gave a brief review of three books written on the subject and alerted the audience to Richard Turley's book to be

published by the University of Illinois Press later this year. Richard is a graduate of the J. Reuben Clark Law School.

Denver and Portland Chapters
Brigham Young University football games proved to be the rallying point for the organization of chapters of the J. Reuben Clark Law Society during the past year. On September 28, 1990, the Portland Oregon Chapter of the society was organized, with James H. Bean serving as chair. The organization luncheon was held at the Red Lion Inn in Portland, and over 70 alumni and other attorneys from the Portland area were in attendance. Dean Reese Hansen updated the chapter members on the latest events at the Law School, and President Rex E. Lee thanked them for their support of BYU and specifically of the Law School. Chapter members traveled to the University of Oregon on September 29 to attend the Oregon-BYU game.

Lawrence Gill is serving as chair of the Denver, Colorado, Chapter and was responsible for organizing the initial chapter luncheon and meeting on November 2, 1990. Provost Bruce Hafen and Dean H. Reese Hansen addressed over 60 members of the Colorado Bar at the meeting. The next day members of the chapter brave enough to weather a winter storm traveled to Colorado Springs to watch the BYU-Air Force game.

Both chapters were organized in fine fashion; however, the BYU football team performed considerably better in Colorado Springs than it did in Corvallis.

Law School Directory

After an extensive revision of the information on the Law Society database, the J. Reuben Clark Law Society Directory has been revised and expanded. The directory has been printed and mailed to members of the society who have ordered copies. Additional copies can be obtained by contacting the J. Reuben Clark Law Society, 338 JRCB, Brigham Young University, Provo, Utah 84602.

Alumni Giving

Results of the Law School's first coordinated annual giving campaign highlight the participation and generosity of alumni from all graduating classes. A total of \$61,005 had been raised as of August 1, and the funds will be used for improvements to the library facilities and to endow the Deem, Crapo, and Hunter professorships. Figures shown do not reflect contributions made by non-alumni members of the J. Reuben Clark Law Society, whose support is of great value to the Law School and its programs.

The campaign was kicked off in November 1990 at the Annual Alumni Dinner in Salt Lake City. Students manned a telephone bank for three days inviting all alumni to participate, and the Alumni Association solicited contributions by mail. Contributions were recorded by graduation year, and class totals follow.

Alumni Association President Ted Lewis was very pleased with the results saying, "We appreciate the willingness and generosity of the alumni of the Law

School in their financial contributions this year. We are also aware and appreciative of the many other contributions, including non-monetary support, given to the Law School—our thanks to all of you."

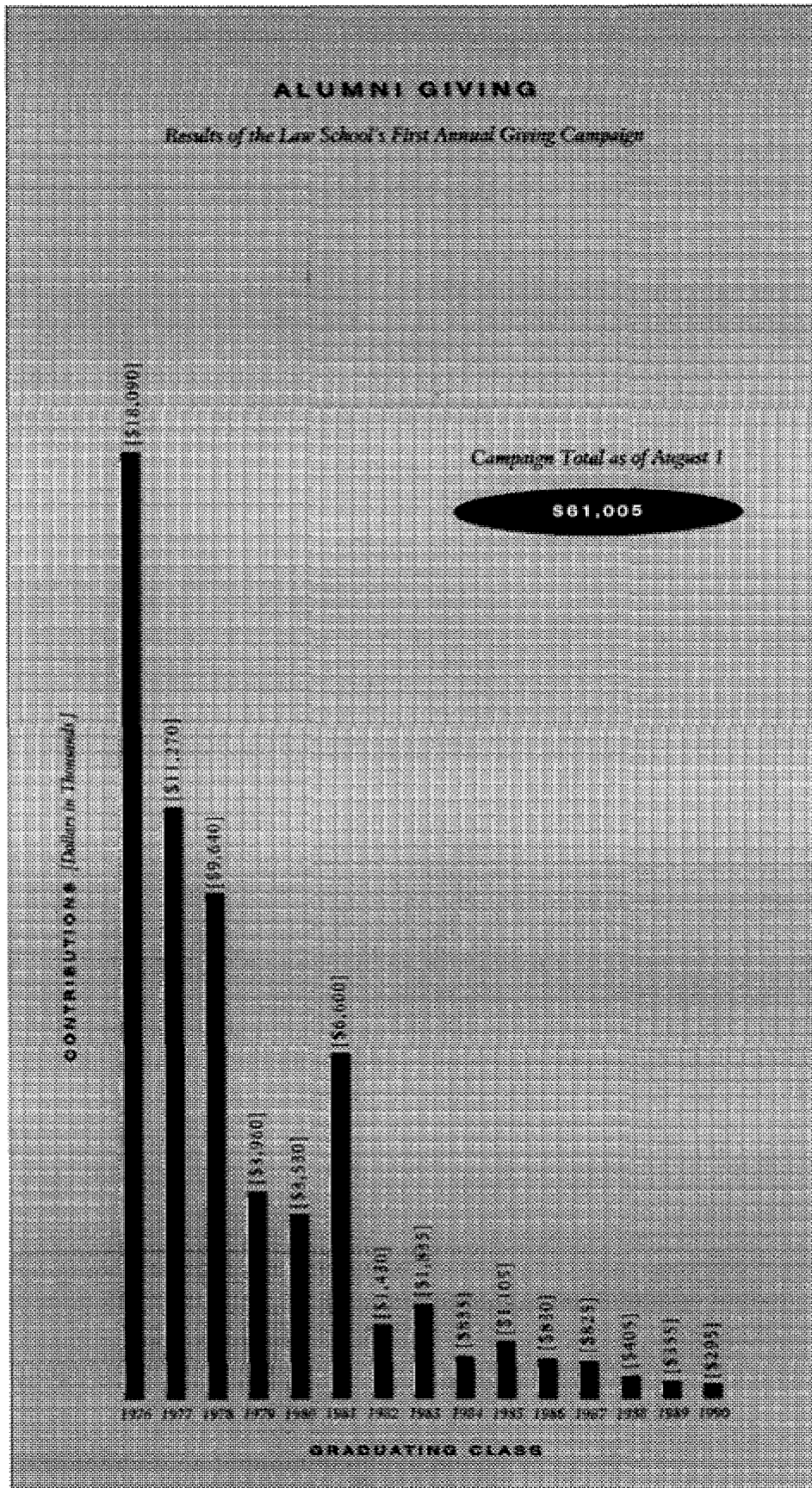
According to Associate Dean Scott Cameron, the money raised through the annual giving campaign is vital. "President Lee has pointed out the increasingly conservative allocation of funds resulting from the worldwide growth of the university's sponsor, The Church of Jesus Christ of Latter-day Saints. As the Law School is able to raise funds among those who have benefitted from it in the past, it is better able to reduce its current need for Church funds."

Law Society and Alumni News

A Sherman Christensen
Law Society member and founder of the American Inns of Court movement. A Sherman Christensen was awarded the 1990 American Bar Association medal for his "conspicuous service in the cause of American jurisprudence." At a ceremony honoring Judge Christensen, ABA president Stanley Chauvin praised him for "devoting his entire life to preserving and protecting the administration of justice."

Rex E. Lee

In addition to his duties as university president, Rex Lee has been keeping busy with two important committees. One group looked into the qualifications of Supreme Court nominee Judge Clarence Thomas, while the



second is concerned with something of true importance, college athletics

President Lee chaired one of three "reading groups" set up by the ABA to review Judge Thomas' written record for the ABA Standing Committee on the Federal Judiciary. These groups, also led by Professor Ronald J. Allen of Northwestern and Dean Pamela Brooks Gann of Duke, reported to the standing committee this fall on the quality of Judge Thomas's work and his suitability for the high court.

In addition, President Lee has been appointed to chair a 10-member task force set up by the NCAA to review its rules and enforcement process. Under increasing pressure from both state legislatures and the U.S. Congress, the NCAA established the group to look into accusations that due process was being violated by NCAA investigations. Also serving on the panel is retired Supreme Court Chief Justice Warren Burger.

Jay Bybee, 1980

After 10 years of private practice and government service, Jay has decided to follow through on his oft-repeated threat to enter law teaching. He has been appointed an assistant professor of law at the Louisiana State University Law Center (see Greg Smith, '78). When Jay graduated in 1980, he worked briefly for Sherman and Stirling in New York City before accepting a clerkship with Judge Donald Russell of the U.S. Court of Appeals for the Fourth Circuit in Spartanburg, South Carolina. From 1981 to 1984 Jay worked in general

litigation for Sidley & Austin in Washington, D C , and in 1984 he joined the U.S Justice Department Jay spent the next two years in the Office of Legal Policy, before moving to the appellate staff of the Civil Division, where he handled some very interesting cases. In 1989 Jay moved to the White House (not to live, just to work) when he accepted a position as associate counsel to the president He joined the faculty at Louisiana State in July, and he will be teaching courses in civil procedure and administrative law this year, hoping to teach constitutional law in the future

Joe Cannon, 1977

Joe recently resigned his position as CEO of Geneva Steel in Orem to begin seeking the U S Senate seat vacated by retiring Senator Jake Garn

David P Kimball III, 1976

After graduating with the Law School's charter class, David returned to Phoenix to begin practicing law He joined Evans, Kitchel & Jenckes, where he spent 13 years developing a specialty in environmental and natural resources law David joined Gallagher & Kennedy in 1989 as a partner and head of the Environmental Department One year ago, David decided to begin a new venture and struck out on his own to found Kimball & Curry, P.C , the first "boutique" environmental law firm in Arizona The seven-attorney firm also includes three other Law School graduates: J Stanton Curry ('82), James J Hamula ('85), and David L Wallis ('88). Kimball's practice

extends throughout the United States, and he has lectured and written extensively on environmental and natural resource issues

Jerry Lin, 1991

Jerry returned to Taiwan this fall to teach law at Chung-Yuan University in the city of Chung-Li Jerry earned his LLB in Taiwan in 1980, before working as a legal and public affairs advisor to the KMT party He came to the United States in 1986 and earned an MCL from the National Law Center at George Washington University in 1988. He will be teaching introductory courses in commercial law and economic and financial law

Bruce T Reese, 1976

On August 22, 1991, Bruce was named executive vice president of Bonneville International Corporation and president of Bonneville Intermountain Group In his new position he will assist Rodney Brady, president and CEO, in managing the corporation and will have line responsibility for all Bonneville divisions located in Utah, including KSL-TV, KSL-AM, Video West, Bonneville Communications, Bonneville Entertainment Corporation, and Bonneville Satellite Corporation Bruce will continue to serve as vice president and general counsel until a new general counsel can be selected.

Doug Smith, 1979

Through his work with a Portland firm and his own private practice, Doug has established himself as one of the premier franchising attorneys in the West. After the break-up of his previous

firm last year, Doug struck out on his own to advise potential franchisers He has established an of counsel relationship with the firm of Fountain & Rhoades, allowing him the freedom to dedicate as much or as little time to firm business as mutually agreeable His clients are located all over the United States and Canada, and clients insist he has the best reputation as a franchise attorney in the Northwest In addition to his focus on franchising, Greg also maintains his general practice

Greg Smith, 1978

Greg has recently been named an assistant professor of law at the Louisiana State University Law Center (see Jay Bybee, '80) After graduating from the Law School, Greg clerked for Judge Monroe McKay of the 10th Circuit Court of Appeals He practiced with the firm of Streich Lang in Phoenix for 11 years, before joining the corporate legal division of Security Pacific Bank of Arizona Greg's principal practice areas were real estate finance and regulatory issues, and he served on the ethics committee of the Arizona State Bar for four years He will be teaching courses in Real Property and Professional Responsibility

Steven E Snow, 1977

Steve is a senior partner in the St George law firm of Snow, Nuffer, Engstrom and Drake He has served on the Washington County School Board and was a member of the Dixie College Institutional Council and president of the Dixie College Alumni Association

from 1980 to 1981 He has been serving on the Utah State Board of Regents, which sets policies for Utah's nine public colleges and universities, since 1983 He was elected vice chairman of the board two years ago and has recently been re-elected for a second term

Robert M Trimble, 1989

Robert recently joined the Dallas office of Jones, Day, Reavis & Pogue, a Cleveland, Ohio, firm

Randell L Wilkinson, 1977

Randell was elevated from his position as a municipal court judge to the superior court bench in Orange County, California Since being named to the position one year ago by then-Governor George Deukmejian, he has immensely enjoyed dealing with its new challenges

The Clark

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