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Religiously Affiliated Law Schools: An Added Dimension

Kevin J Worthen

My topic this morning is religiously affiliated law schools. It seems a fitting topic since we are convened on the campus of a very good religiously affiliated law school as members of a society that has its origin and continues to have its base in another. I think it safe to say this is a sympathetic audience—or at least I hope so. Indeed, one may wonder why I need 40 minutes to address something with which we are all so familiar and all in agreement. A story told about the notoriously taciturn Calvin Coolidge illustrates the point. When Coolidge returned home from Sunday services on one occasion, his wife, who was not able to attend, asked him whether he enjoyed the minister's sermon. "'Yes,' came the one-word replied. 'And what was it about?' 'Sin.' 'Well, what did he say?' she persisted. 'He was against it.'"¹

Similarly, one might prefer that I simply say: "Religiously affiliated law schools? I am in favor of them." While there is likely not much new in what I will present today, I believe it is worth some elaboration, even if only in the form of a reminder, because the topic is of such importance not only to religious believers but also to those who believe in our legal system.

I want to address three separate, but related, questions about religiously affiliated law schools: First, why should the legal academy and the bar accept religiously affiliated law schools? Second, why would a church start a law school? Third, why should religious believers who attend or graduate from law schools that are not religiously affiliated care about them?

In posing each of these three questions the way I do, I understand that many would suggest that the questions ought to be framed in an even

more contingent manner. Instead of asking why the academy and bar should accept religiously affiliated law schools, they would ask whether they should accept them. Similarly, rather than wondering why a church would establish a law school, they would wonder whether a church should do so.

Thus, I recognize that there are many skeptics out there, and their skepticism is not without some foundation. One way to illustrate the basis for this skepticism is to note at the outset that I cannot tell you exactly how many religiously affiliated law schools there are in the country. Contrary to what you might think, my inability to do so is not just the result of my inadequate research or math skills. Even though there is now an association of religiously affiliated law schools (which was formed in 1994), there is no consensus among that group, nor among scholars whose math and research skills are unassailable, as to the exact number of religiously affiliated law schools in the United States today.² That fact is instructive in two important ways.

First, it highlights the fact that religiously affiliated law schools are not all alike. Some make religion a prominent feature of their law schools, such that visitors cannot miss their religious affiliation. At the outset of its report, the most recent ABA site inspection team to visit the law school at BYU stated: “First, and obviously, the Law School is an LDS law school. The fact that it is an LDS law school is an essential feature of the School’s character, and the faculty, staff, and students consistently demonstrated a deep commitment to this character.”³ They went on to say they were not sure they knew what it meant to be an LDS law school (a question that is much more difficult to answer than many might think), but it’s clear that we were one. It’s hard to be at BYU for any length of time without realizing that it is a religiously affiliated institution—and we hope it is not just because alcohol and caffeine are noticeably absent from campus events.

The religious nature of some religiously affiliated law schools is less obvious. Steve Barkan, former interim dean at the Marquette Law School, a Jesuit institution, once observed that “[w]ith the exception of occasional elective courses and extra-curricular activities, Jesuit law schools show relatively little objective evidence of their religious affiliation. For the most part, Jesuit law schools . . . are virtually indistinguishable from their secular counterparts.”⁴ Barkan then observed that “[d]epending on one’s perspective, these comments might be either compliments or criticisms,”⁵ an observation that applies with full force to schools, like BYU, that are more openly religious.

Second, and more important, the difficulty in identifying the exact number of religiously affiliated law schools reflects the historical fact that most of them (in tandem with the larger universities of which they are a part) have tended to become more secularized over time, so that those that at one point might have been classified as religiously affiliated no longer

are. One quick illustration: In his 1937 inaugural address, Yale University President Charles Seymour urged “the maintenance and upbuilding of the Christian religion as a vital part of the university life,” calling upon “all members of the faculty . . . freely to recognize the tremendous validity and power of the teachings of Christ in our life-and-death struggle against the forces of selfish materialism.”⁶ While such a statement by its leader would arguably suffice to classify a law school as religiously affiliated, given the wide range of schools that could fit that description, it is beyond dispute that Yale no longer fits into that category.

Like Yale, many, if not most, major private universities that currently have law schools started out with some form of religious affiliation. Many, if not most, however, would not now fit in that category, and some that do seem headed out the door. That makes it difficult to determine at any given point who is in and who is out. More important, it provides some understanding of why some skepticism exists about religiously affiliated law schools.

Indeed, a somewhat conflated review of the history of legal education in western culture may cause one to wonder whether there is room for any optimism about the future of religion in the legal academy. Harold Berman has noted that from the time formal legal training at a university began in Bologna in the 11th century up until the middle of the 19th century, “legal education in the West . . . always had a very important religious dimension.”⁷ Religion played a central—if not the central—role in the process. By contrast, in 1985 when Rex Lee addressed the question of the role of religious law schools in American legal education, he correctly observed that “[t]here is a substantial segment of legal educators whose view on that subject can be stated in five words: there is no such role.”⁸

It is not, in my view, entirely coincidental that this trend toward secularization—which some applaud and others decry—has occurred largely in tandem with the development of the modern law school. Once Christopher Columbus Langdell and his devotees advanced the “notion that the law is a pure and exact science, consisting of principles which are discoverable through analysis of the embedded logic of reported cases,”⁹ learning by faith began to fall into disfavor, so much so that a century later, Roger Cramton, then dean at the Cornell Law School, could conclude that what he called the “Ordinary Religion of the Law School Classroom” left little room for what we would call traditional religious beliefs.¹⁰ Cramton noted that in the modern law school classroom, the unspoken assumptions are that lawyers should be skeptical, value neutral instrumentalists who analyze issues with cold logic and little concern for the ends to which their craft will be put—that decision being made by the client.¹¹ These characteristics are at least in tension with much of the teachings of traditional faith-based religions, which preach faith, not skepticism, and believe in moral truths, not moral relativism.

Regardless of the exact causes of the trend toward secularization, there is little dispute as to its reality, and that reality poses a challenge for those who believe there is a role for religiously affiliated law schools. As Rex Lee noted in 1985, the “historical pattern of religious schools has been to achieve *either* professional excellence as secular institutions, *or* fidelity to their religious values as so-so law schools.”¹² Some remain convinced that this pattern is inevitable. Mark Tushnet has argued that a religiously affiliated university “‘will find it extremely difficult’ to maintain this affiliation if it also seeks to attain or preserve a national reputation.”¹³ For many, then, the choice is clear: a law school can be secular or second rate.

It is in this skeptical environment that I pose the three questions I wish to address. I do not purport to provide a full answer to any of the questions but rather hope to provoke further thought and discussion about these issues.

First, why, given the current context, should the legal academy and the bar accept religiously affiliated law schools? Over the last two decades, a growing body of literature has supplied various answers to this question. I highlight three of the more common ones.

First, religiously affiliated law schools can provide a large part of the antidote to a number of the ills that have beset lawyers and the legal profession in the last half century. At an individual level, a growing body of literature reveals an increasing dissatisfaction with the practice of law. A 1990 survey by the ABA Young Lawyers Division revealed that 19 percent of attorneys were generally dissatisfied with their jobs, a 27 percent increase from a similar survey performed just six years earlier.¹⁴ A survey of lawyers in Wisconsin nine years later indicated that 91 percent found the practice of law increasingly stressful every year.¹⁵ Yet another study concluded that lawyers experience depression at a rate that is anywhere from two to six times greater than the general population.¹⁶ As one scholar noted, these surveys demonstrate “a clear . . . decline in lawyers’ career satisfaction, physical health and mental health,”¹⁷ a trend that an ABA committee noted, “threatens the well-being of lawyers and firms in every part of the country.”¹⁸

At a macrolevel the concerns are magnified. As faith and other values have been excluded from the legal academy, the nature of the legal practice has itself changed in disturbing ways. Lack of civility is increasingly a concern of the bench and bar. Moreover, questions concerning the usefulness or destructiveness of lawyers who are trained to be value-neutral are arising with greater frequency. As Derrick Bell has observed:

Lawyers need conscience as well as craft. To borrow an old but picturesque phrase, skilled lawyers without conscience are like loose guns on a sinking ship, their very presence is so disconcerting that they wreak damage whether or not they hit anything.¹⁹

Religiously affiliated law schools are in a unique position to address these ills because the values that so many find missing in the practice of law and legal education are, to quote Rex Lee, “integral parts of the values that for millennia have constituted the foundation stones of Jewish, Christian, and other religious teachings.”²⁰ This is not to imply that those who are not religious cannot hold these values. Anyone with experience in the world recognizes that is not the case. Some of the most caring, compassionate, and competent lawyers I know have no religious beliefs. But there is often an added dimension that accompanies and sometime magnifies the manifestation of these values if they are rooted in deep-seated religious conviction. Let me illustrate with an experience I shared with our first-year students at last year’s orientation.

It concerns one of our graduates who told me of his efforts to apply gospel truths, as he understood them, to the practice of law. He is a litigator—a very good one. As you know, litigation is often contentious, sometimes overly so. On one occasion this lawyer found himself in a deposition involving several attorneys, one of whom repeatedly verbally abused one of the other lawyers, engaging in personal attacks and tirades. Our graduate, somewhat stunned, did little to intervene on behalf of the victim, in part because the issues that sparked the outbursts had nothing to do with his client. That evening, however, he felt terrible because he had done nothing to prevent the attack from continuing. He resolved that he would never again allow that to happen to another attorney or witness when he was present, because he understood the deep truth that we are all sons and daughters of God with a divine nature and destiny.

That story, by itself, could illustrate how an understanding of eternal truths can shape the practice of law in a positive way. But the story does not end there. On further reflection our graduate realized that the abusive attorney was also one of God’s children with the same divine nature and potential as everyone else. He concluded that the laws of God required him to be concerned about this overly zealous and somewhat flawed lawyer as well. He knew the opposing attorney somewhat and realized that this behavior was not aberrational. After considerable reflection he concluded that the opposing attorney had some unmet needs that he, our graduate, could never fill. When he was about to let the matter pass, he suddenly realized that there was One—a perfect One—who, because of His infinite atoning sacrifice, could fill the unmet needs of this obviously unhappy attorney and make him whole. At that point our graduate resolved that at minimum he would pray for the well-being and happiness of that—and other—opposing counsel whose own unhappiness spilled out into the lives of others. Thus began his practice of praying for those with whom he worked, even those on the other side of an issue, and especially those whose actions were offensive to him and others. While it is not possible to measure the impact these heavenly importunings have had on the lives of

his opposing counsel, this attorney reported that it has made his own professional life more fulfilling. I am also certain this lawyer has internalized the values of civility that so many judicial officials and bar leaders seek to instill in all lawyers.

Again, this is not to imply that those who are not religious will not share or exhibit the same values. But for those who are religious believers, those beliefs add another dimension. Moreover, that kind of story could not be told in that way at a state-sponsored law school; yet it, and similar stories, are the kind that can speak to the souls of many law students and lawyers in ways that will allow them to practice law more effectively and with more satisfaction. Thus, religiously affiliated law schools can provide a distinctively powerful form of teaching the values that the bar, the academy, and society encourage all lawyers to possess.

The second reason that the bar and academy should accept religiously affiliated law schools relates to another issue of importance to those two entities: the need for diversity in legal education. As the Supreme Court noted in *Grutter v. Bollinger*, “The skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.”²¹ Thus, in order to be effective, legal education must expose lawyers to diverse views. Some will undoubtedly find use of this argument in defense of religiously affiliated law schools surprising, if not objectionable, for one of the common criticisms of such law schools is that they are too narrow, insular, and parochial and therefore insufficiently diverse. While that is a real issue to which religiously affiliated law schools need constantly to be attuned, these same schools have contributed—and continue to contribute—to a diverse environment in ways that often go unrecognized.

As to the past, many Catholic law schools started in the late 19th and early 20th century precisely because the then-established law schools were unwilling to accept Catholic students or immigrants who “either could not afford, or were otherwise excluded from law schools” at the time.²² Thus, religiously affiliated law schools have opened up legal education and the influence that flows from that education to segments of society that otherwise might have been excluded.

One might counter that the need for such schools has now dissipated in the more enlightened era in which we live, one in which Catholics and members of other previously excluded groups are now found at all top law schools. However, one should not underestimate the impact that the establishment of Catholic schools had—and continues to have—on that enlightenment. The success of Catholic law schools provided an irrefutable rebuttal to the arguments of those who contended, either openly or covertly, that Catholics or immigrants could not flourish in legal education or the legal profession. Moreover, one can argue that the success of well-regarded Catholic schools like Notre Dame and Boston College continues to open

doors to Catholics at other law schools because those schools provide a continuing reminder to the world that Catholicism and top-quality legal education are not incompatible, a theme to which I will return at the end of my remarks.

Even if this first contribution of religiously affiliated law schools to the diversity of legal education has run its course, there is another often-overlooked contribution that is perhaps more valuable today than ever. As scholars such as Michael McConnell and Jim Gordon have articulated so well, religiously affiliated universities and law schools contribute to diversity in legal education at a macrolevel in ways that other institutions simply cannot.²³ As Judge McConnell put it, religiously affiliated universities

enrich our intellectual life by contributing to the diversity of thought and preserving important alternatives to post-Enlightenment secular orthodoxy. Their very distinctiveness makes them better able to resist the popular currents of majoritarian culture and thus to preserve the seeds of dissent and alternative understandings that may later be welcomed by the wider society.²⁴

While diversity of thought and viewpoint is an important aspect of legal education, there is a certain irony in the tendency of the legal academy to insist that true diversity can be established only if every institution is diverse in exactly the same way. Religiously affiliated law schools contribute enormously to diversity when one considers diversity at an institutional and not just individual level. As the former dean of the Dayton Law School observed, “The world is a more interesting place . . . when people have beliefs, convictions, and a song to sing.”²⁵

Religiously affiliated law schools provide the environment in which those beliefs and convictions can be nourished in a legal context. Unless the legal academy and bar have reached the point at which they have concluded with certainty that they have all the answers and that religion has absolutely nothing to offer, they should gratefully accept the diverse voice that religiously affiliated law schools provide, as those voices may otherwise not be heard at all.

That leads to a third reason why the academy and bar should accept religiously affiliated law schools: such schools are essential to religious liberty overall. As Mike McConnell has observed, religiously affiliated universities

are an important means by which religious faiths can preserve and transmit their teachings from one generation to the next, particularly for nonmainstream religions whose differences from the predominant academic culture are so substantial that they risk annihilation if they cannot retain a degree of separation. The right to develop and pass on religious teachings is at the very heart of the first amendment.²⁶

While some might limit that argument to undergraduate education that involves students who are younger and therefore generally more impressionable, similar value transmission is essential in law schools. As the Supreme Court noted in *Grutter*, law schools have historically proven to be institutions that develop leaders,²⁷ and as Judge McConnell has observed, “Religious colleges and universities do more than transmit creeds; they also raise up leaders and members in the tradition and communion of the faith.”²⁸

There are other things that could and have been said in support of the proposition that the bar and academy should accept religiously affiliated law schools. I will save those for another day and instead turn to the somewhat-related, but very distinct, and much-less-often-asked question: Why would a church have a law school?

This question is less often considered for a variety of reasons. First, it is of relevance to fewer people. While all the academy and bar have some interest in whether religiously affiliated law schools are allowed to exist, only those who are members of a church that has or will establish a law school are directly concerned with this question. And that universe is even smaller than the universe of religiously affiliated law schools. Many religiously affiliated law schools were started and are controlled not by churches themselves but by members of the faith who seek to promote its values. Thus, some religiously affiliated law schools have limited or no formal ecclesiastical ties with the church with which they are affiliated.²⁹

Most of the more limited scholarly writing on this subject has come as a result of the Catholic Church’s efforts in the 17 years since the issuance of *Ex Corde Ecclesiae* to more closely regulate Catholic universities, even those not formally initiated by the church itself (such as the Jesuit institutions). Leading among these scholars has been Thomas Shaffer, one of the most thoughtful and influential scholars of our time on the relationship between law and religion.

Professor Shaffer has identified a number of possible reasons why churches—and particularly the Catholic Church, of which he is a member—would have a law school. Dismissing the notion that they do so to make money, he concludes that “a church has a law school because the church wants to do something for God that it can only do by having a law school.”³⁰ He then identifies some of the things that might qualify in that regard. A church law school could, for example, “provide vertical mobility to members of the church.”³¹ It might “provide a spiritually cordial atmosphere for believers who study law,” so they remain close to the faith as they study.³² Or, Shaffer opines, a church law school may reflect a “theology that says the church should serve the community,” and law is one way for that to happen.³³ Finally, Shaffer says—and this is clearly the idea he likes best—the church may have a law school because the church serves a priestly and prophetic function and the law school may help it

carry out that mission.³⁴ This is the most challenging role a law school may play because, just as prophets and priests must on occasion call believers not to follow the ways of the world, churches that have a law school to help them carry out priestly or prophetic functions must at times remain apart from the mainstream. Because it is required to live in the world, the church understands the usefulness of the law.³⁵ But because it cannot be fully part of the world, the church cannot take its moral guidance from the law.³⁶ Thus, the church is desirous to use the law to advance its interest but also is wary of the law, and it wants lawyers who understand that tension.³⁷ It may conclude, Shaffer says, that the best way to do that is to have its own law school.³⁸ This will allow the church to “focus more carefully and more forcefully on how it understands the practice of law, so that the practice of law will not only be moral but will also be priestly and prophetic.”³⁹

Not everyone involved in Catholic legal education agrees with Shaffer,⁴⁰ but the possible reasons he suggests provide considerable food for thought for anyone interested in any church law school, including the one in Provo, Utah—to which I now turn my remarks.

Many have speculated as to the reasons why The Church of Jesus Christ of Latter-day Saints established a law school. The answers suggested by Shaffer are all plausible: the Church may have wanted to provide vertical mobility for its members, or it may have wanted to provide a spiritually cordial atmosphere in which believers could study the law. President Marion G. Romney’s observation that the Law School was established so that there would be “an institution in which [students] may ‘obtain a knowledge of . . . [the] laws of . . . man’ in the light of the ‘laws of God,’” strongly suggests something along the lines of the latter.⁴¹ The Church might also have intended that the Law School aid in the Church’s service to the community in ways that the J. Reuben Clark Law Society’s pro bono project seems to be doing.

In a 1975 address at the dedication of the Law School building, President Romney provided some other reasons why he used his considerable influence to help establish the Law School, including the Law School’s potential impact on the rest of university, the positive impact that the atmosphere of the university would have on the Law School, and—most relevant to this group—his desire to perpetuate “the memory and influence of President J. Reuben Clark Jr.” something to which all of you continue to contribute.⁴²

For me, however, the most interesting reason posed by President Romney in that address is the one he listed first, one suggesting a role for the Law School in filling the priestly mission of the Church, not in the way that Shaffer had in mind but in a manner that provides a more direct connection with the purposes and doctrines of the Church than the other possible reasons.

In explaining why he advocated for the Church to establish a law school, President Romney stated, “To begin with, I have long felt that no branch of learning is more important to an individual or to society than law.”⁴³ President Romney was not one given to hyperbole, and I don’t believe he intended to engage in it on this occasion. With that in mind, reflect for a minute on what he said: “No branch of learning is more important to an individual or to society than law.” No other branch of learning? Not philosophy, not medicine, not engineering, not theology? Could he have really meant that?

I believe the answer is yes, and my belief is based on remarks President Romney made two years earlier when speaking to the charter class on its first day of law school in a portion of his address that tends not to get much emphasis in our sound-bite world. At the outset of those remarks, President Romney stated in plain, declarative terms: “To appreciate the reason the Church is establishing a school of law here at Brigham Young University, one must have some understanding of The Church of Jesus Christ of Latter-day Saints, and know and realize something about its nature and its purpose.”⁴⁴ He then described events that occurred well before any board of trustees meetings in the early 1970s and truths that stretch well beyond the principles found in any casebook.

First—That we humans “are begotten sons and daughters unto God” (D&C 76:24).

Second—That mortality is but one phase, albeit an indispensable phase, of our total existence.

Third—That God created us that we “might have joy” (2 Nephi 2:25) and that it is His purpose and His work and His glory “to bring to pass the immortality and eternal life of man” (Moses 1:39), which is the highest form and type of joy and happiness.

Next—That God has provided in the Gospel of Jesus Christ the true and only way by which men can achieve that objective.⁴⁵

President Romney then listed other eternal truths and doctrines. In essence, he outlined the plan of salvation. After laying that groundwork, he then discussed some of what the Lord has said in modern revelation about law, quoting specifically from the 42nd and 34th verses of the 88th section of the Doctrine and Covenants: “[God] hath given a law unto all things, by which they move in their times and their seasons; [and] that which is governed by law is also preserved by law and perfected and sanctified by the same.” President Romney could have gone on to quote other portions of that section, including the fact that “[a]ll kingdoms have a law given . . . [a]nd unto every kingdom is given a law; and unto every law there are certain bounds also and conditions.”⁴⁶

The point seems clear: law extends well beyond this mortal sphere. It is an essential part of our Father in Heaven’s eternal plan of happiness for

His children. Thus, when we study law we are truly acquiring an “education for eternity,” to borrow President Kimball’s phrase.⁴⁷ I believe it was with that in mind that President Romney asserted his belief that “no other branch of learning is more important to an individual or to society than law,” for as he noted in a different context, “[T]here is no permanent progress made in any field or in any place except it be through obedience to the governing law.”⁴⁸

I believe that one cannot fully understand why this Church would establish a law school if one does not first understand how important, how essential, how central, law is to God’s eternal plan for us, His children.

When I was midway through law school, I attended a general conference session with my father. Shortly after the session, my father ran into an acquaintance of his and introduced me. My father informed his friend that I was in law school. With all earnestness the man responded, “I once thought about going to law school, but then I realized that there would be no need of lawyers in the celestial kingdom.” He did not smile; he was not joking. Somewhat taken aback, I asked him what he did for a living. He said he was a dentist. I am glad that I refrained from asking him whether he seriously thought that teeth would need repair after the resurrection, but I have regretted that I did not have a better answer than that, one that President Romney provided. Yes, there will be need for those who understand law in the celestial kingdom. Indeed, I believe that those who do not understand law will not be there.⁴⁹ As Joseph Smith observed:

If man has grown to wisdom and is capable of discerning the propriety of laws to govern nations, what less can be expected from the Ruler and Upholder of the universe? Can we suppose that He has a kingdom without laws? Or do we believe that it is composed of an innumerable company of beings who are entirely beyond all law? . . . Would not such ideas be a reproach to our Great Parent, and at variance with His glorious intelligence? Would it not be asserting that man had found out a secret beyond Deity? That he had learned that it was good to have laws, while God after existing from eternity and having power to create man, had not found out that it was proper to have laws for His government?⁵⁰

In making these observations I do not suggest that the Church created the Law School so that students could spend three years trying to extract eternal legal principles from the scriptures. The principal focus of the Law School has been and will continue to be to provide a first-rate legal education focused on secular laws. Students have been and will be required to learn the skills and concepts associated with those laws in the same way that they are learned in other top-tier law schools. As President James E. Faust informed our students several years ago:

Do not expect your professors . . . to concentrate [their] lessons out of the scriptures, although occasionally [they] may wish to do so. [Their] obligation

is to teach you the secular rules of civil and criminal law and matters that relate to them. Your obligation is to learn the rules of law and related matters. The whisperings of the Holy Spirit will no doubt help you, but you must learn the rules of law, using Churchill's phrase, by "blood, sweat, and tears."³¹

I believe, however, we will not understand or achieve the full purposes of the Law School unless we recognize that the study of law is much more important and deep than most in the world realize. It is only when we study the laws of men in the light of the laws of God that we can begin that process. A school like BYU must be the kind of place where that can happen if it is to be the law school the Church wants it to be.

Now to the third and final question: Why should religious believers who do not attend religiously affiliated law schools care about the answers to the two prior questions?³² At a general level, one would expect that they might care to a greater extent than nonbelievers merely because they are concerned about the well-being of their fellow believers. But I believe the interest goes much deeper than this and that it turns on things that are of more direct and practical effect than the more abstract concern for the well-being of fellow brothers and sisters. I mention three in particular.

First, to the extent that religiously affiliated law schools are essential to the full enjoyment of religious liberty in the United States, believers, even those who are not lawyers or law students, have an interest in the success of those law schools. Indeed, for an organization like the J. Reuben Clark Society—which maintains that strength is brought to the law by a lawyer's personal religious convictions—not just the existence but the success of religiously affiliated law schools is of great importance.

Second, as noted above, I believe the existence of well-respected religiously affiliated law schools improves the environment and the demand for believing lawyers and law students at nonreligiously affiliated law firms and law schools. In that regard, I believe that the successes attained by J. Reuben Clark Law School have helped open doors for all LDS law students and lawyers, even those who never attend a class at BYU. I was at a meeting of law deans last spring, when the dean of another law school approached me, introduced himself with a broad smile and announced, "We have six of your students at our law school and we love them." He obviously expected me to join in his joy, which I did, even though none of those students had ever attended BYU Law School. As I have watched with pleasure the growing number of student chapters of the J. Reuben Clark Law Society, I believe we at BYU Law School have an obligation to help those LDS law students who do not attend BYU by being as good a law school as we can be because I know that at least some of their deans, classmates, and potential employers see them as "our" students.

Similarly, we at BYU Law School benefit from the good works of LDS students at other law schools. Your successes, especially to the extent you

are affiliated with chapters of the J. Reuben Clark Law Society, clearly redound to our benefit. That is also true of LDS lawyers who are not our graduates. Indeed, the J. Reuben Clark Law Society was founded in large part because Bruce Hafen, then the dean of J. Reuben Clark Law School, and Ralph Hardy, a prominent LDS attorney who was not a BYU Law School graduate, both realized the extent to which their successes and destinies were tied together.

Thus, we are somewhat fellow travelers in this endeavor of bringing together two things that command our time and passion: law and religion. That leads to the third reason why believers who do not attend religiously affiliated law schools should care about the questions such schools face, especially the second one: Why would a church start a law school? I believe that great benefit can come to any LDS lawyer, even those who are not BYU law students or graduates, in considering deeply why the Church would start a law school. I have suggested several reasons. Some are more narrowly focused on the campus at BYU. But I believe the most important reasons extend well beyond that setting both geographically and temporally. As I indicated, it is clear to me from both President Romney's observations and the scriptures that law is of much broader importance than many members of the Church, including many lawyers, may initially suppose. And, while I have given the matter some thought, it is clear to me that I have not—and likely will not—fully comprehend its importance on my own.

I, therefore, invite you to join with me in that exciting ongoing endeavor. For the law is indeed a noble profession, and there truly is “strength brought to the law by a lawyer’s personal religious convictions.”

This address was given at the J. Reuben Clark Law Society Conference at Pepperdine University in Malibu, California, on February 16, 2007. Reprinted from the Clark Memorandum, fall 2007, 10–21.

Kevin J Worthen received his JD from BYU Law School in 1982, clerked for Judge Malcolm R. Wilkey of the U.S. Court of Appeals for the D.C. Circuit 1982–83 and for Justice Byron R. White of the U.S. Supreme Court 1983–84. He has served as a law professor since 1987 and was associate dean 1999–2004 and dean 2004–2008 of J. Reuben Clark Law School. He is currently Hugh W. Colton Professor of Law and advancement vice president at Brigham Young University in Provo, Utah.

Notes

1. PAUL F. BOLLER JR., PRESIDENTIAL ANECDOTES 241–42 (rev. ed. 1996).
2. Within a two-year period, three articles came up with three different numbers. Steven M. Barkan, *The First Conference of Religiously Affiliated Law*

Schools: An Overview, 78 MARQ. L. REV. 247, 247 (1995) (35 religiously affiliated law schools); David L. Gregory, *Where to Pray? A Survey Regarding Prayer Rooms in A.B.A. Accredited, Religiously Affiliated Law Schools*, 1993 BYU L. REV. 1287, 1307 (52); Thomas L. Shaffer, *Erastian and Sectarian Arguments in Religiously Affiliated American Law Schools*, 45 STAN. L. REV. 1859, 1864 n.18 (1993) (48). For a more recent effort at enumeration (including several schools not in existence when the earlier numbers were calculated), see Monte N. Stewart & H. Dennis Tolley, *Investigating Possible Bias: The American Legal Academy's View of Religiously Affiliated Law Schools*, 54 J. LEGAL EDUC. 136, 142 (2004) (44).

3. American Bar Association, *Inspection Report on the J. Reuben Clark Law School*, 5 (2005).

4. Steven M. Barkan, *Jesuit Legal Education: Focusing the Vision*, 74 MARQ. L. REV. 99, 102–03 (1990).

5. *Id.* at 103.

6. GEORGE M. MARSDEN, *THE SOUL OF THE AMERICAN UNIVERSITY: FROM PROTESTANT ESTABLISHMENT TO ESTABLISHED NONBELIEF* 11 (1994).

7. Harold J. Berman, *The Secularization of American Legal Education in the Nineteenth and Twentieth Centuries*, 27 J. LEGAL EDUC. 382, 382 (1975).

8. Rex E. Lee, *The Role of the Religious Law School*, 30 VILL. L. REV. 1175, 1175 (1985).

9. Graham B. Strong, *The Lawyer's Left Hand: Nonanalytical Thought in the Practice of Law*, 69 U. COLO. L. REV. 759, 759–60 (1998).

10. Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247 (1978). Cramton notes, for example, that law students tend to be (and are trained to be) “tough minded” rather than “tender minded” and that the former group tends to be “irreligious.” *Id.* at 261.

11. More specifically, Cramton notes that an outside observer of a modern law school classroom would conclude that underlying the legal education system are: (1) “a skeptical attitude towards generalizations, principles, and received wisdom,” (2) “an instrumental approach to law and lawyering,” (3) “a ‘tough-minded’ and analytical attitude towards lawyer tasks and professional roles,” and (4) “a faith that man, by the application of his reason and the use of democratic processes, can make the world better.” *Id.* at 248–52.

12. Lee, *supra* note 8, at 1175–76 (1985).

13. Robert John Araujo, “*The Harvest Is Plentiful, but the Laborers Are Few*”: *Hiring Practices and Religiously Affiliated Universities*, 30 U. RICH. L. REV. 713, 718 (1996) (quoting Mark Tushnet, *Catholic Legal Education at a National Law School: Reflections on the Georgetown Experience*, in *GEORGETOWN AT TWO HUNDRED: FACULTY REFLECTIONS ON THE UNIVERSITY'S FUTURE* 322 (William C. McFadden ed., 1990)).

14. AMIRAM ELWORK, *STRESS MANAGEMENT FOR LAWYERS* 14 (3d ed. 2007).

15. *Id.* at 15.

16. Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1347 (1997).

17. ELWORK, *supra* note 15, at 13.

18. *Id.*

19. Derrick A. Bell Jr., *Humanity in Legal Education*, 59 OR. L. REV. 243, 244 (1980).

20. Rex E. Lee, *Today's Religious Law School: Challenges and Opportunities*, 78 MARQ. L. REV. 255, 259 (1995).
21. 539 U.S. 306, 330 (2003).
22. Barkan, *supra* note 4, at 104.
23. See, e.g., James D. Gordon III, Individual and Institutional Academic Freedom at Religious Colleges and Universities, 30 J.C. & U.L. 1 (2003).
24. Michael W. McConnell, *Academic Freedom in Religious Colleges and Universities*, 53 LAW & CONTEMP. PROBS. 303, 312 (1990).
25. Lee, *supra* note 8, at 1180 (quoting Dean Frederick Davis of the University of Dayton School of Law).
26. McConnell, *supra* note 24, at 316.
27. *Grutter*, 539 U.S. at 332.
28. McConnell, *supra* note 24, at 316 n.38.
29. Steven M. Barkan, *supra* note 1, at 247. "The strength of the religious identity of each of [the religiously affiliated] law schools, and the extent to which the religious identity affects the life of each law school, vary greatly." *Id.*
30. Thomas L. Shaffer, *Why Does the Church Have Law Schools?*, 78 MARQ. L. REV. 401, 402 (1995).
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.* at 402–03.
35. *Id.* at 404.
36. *Id.* at 405.
37. *Id.* at 404–06.
38. *Id.* at 406.
39. *Id.*
40. See, e.g., Mark A. Sargent, *An Alternative to the Sectarian Vision: The Role of the Dean in an Inclusive Catholic Law School*, 33 U. TOL. L. REV. 171 (2001).
41. Marion G. Romney, *Becoming J. Reuben Clark's Law School*, in ADDRESSES AT THE CEREMONY OPENING THE J. REUBEN CLARK LAW SCHOOL, AUGUST 27, 1973 17, 20 (1973).
42. Marion G. Romney, *Why the J. Reuben Clark Law School?*, in DEDICATION: TO JUSTICE, TO EXCELLENCE, TO RESPONSIBILITY: PROCEEDINGS AT THE CONVOCATION AND DEDICATION OF THE J. REUBEN CLARK COLLEGE OF LAW, Brigham Young University, Provo, Utah, September 5, 1975 43, 43–44 (1975).
43. *Id.* at 43.
44. Romney, *supra* note 37, at 17.
45. *Id.*
46. *Doctrine and Covenants* 88:34, 36.
47. Spencer W. Kimball, *Climbing the Hills Just Ahead: Three Addresses*, in EDUCATING ZION 43 (John H. Welch & Don E. Norton eds., 1996).
48. Marion G. Romney, *The Rule of Law*, ENSIGN, Feb. 1973, at 2, 2.
49. See, *Doctrine and Covenants* 88:22.
50. TEACHINGS OF THE PROPHET JOSEPH SMITH 55 (Joseph Fielding Smith comp., 1976).

51. James E. Faust, *The Study and Practice of the Laws of Men in the Light of the Laws of God*, in *LIFE IN THE LAW: ANSWERING GOD'S INTERROGATORIES* 37 (Galen L. Fletcher & Jane H. Wise eds., 2002).

52. With respect to the first question, the real inquiry here is why this group should care more than a nonbelieving lawyer or law student since all lawyers and law students presumably have some interest in the first question.