

Fall 1992

## Clark Memorandum: Fall 1992

J. Reuben Clark Law Society

J. Reuben Clark Law School

Follow this and additional works at: <https://digitalcommons.law.byu.edu/clarkmemorandum>



Part of the [Civil Rights and Discrimination Commons](#), [Legal Biography Commons](#), [Legal Education Commons](#), and the [Legal Ethics and Professional Responsibility Commons](#)

---

### Recommended Citation

J. Reuben Clark Law Society and J. Reuben Clark Law School, "Clark Memorandum: Fall 1992" (1992). *The Clark Memorandum*. 12.  
<https://digitalcommons.law.byu.edu/clarkmemorandum/12>

This Article is brought to you for free and open access by the Law School Archives at BYU Law Digital Commons. It has been accepted for inclusion in The Clark Memorandum by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

# CLARK

MEMORANDUM



BRIAN  
YOUNG  
UNIVERSITY

J. REUBEN  
CLARK LAW  
SCHOOL

FALL 1992

# CLARK

MEMORANDUM

## CONTENTS

FALL 1992

H Reese Hansen  
*Dean*

Scott W Cameron  
*Editor*

Charles D Cranney  
*Associate Editor*

Kathy D Pullins  
*Contributing Editor*

Linda A Sullivan  
*Art Director*

John Snyder  
*Photographer*

Joyce Janetski  
*Assistant Copy Editor*

Allison Yauncy  
*Student Copy Editor*

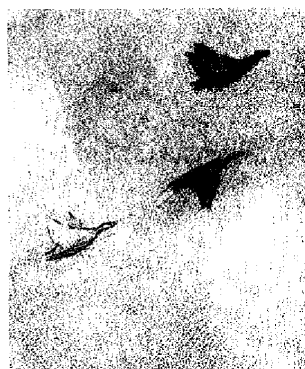
<i>Apostles of Equality</i> Kenneth R Wallentine	2
<i>Portraits</i>	10
<i>A Camelot for Scott</i> Lew Cramer	16
<i>Heroes for Our Time</i> <i>Going Beyond Ethical Codes</i> Thomas D Morgan	22
<i>Memoranda</i>	26

Fall 1992

The *Clark Memorandum* is published by the J Reuben Clark Law Society and the J Reuben Clark Law School, Brigham Young University

Copyright 1992 by Brigham Young University All Rights Reserved

Cover Illustration by Greg Hally







Wally

# A P O S T L E S

Despite the infusion of billions of dollars into our cities, innumerable studies and blue-ribbon commissions, and decades

of litigation, racial division remains

Recent riots in Los Angeles show how

relations in the past 30 years Social

spin theories of blame and responsibility,



America's most obdurate dilemma

pathetically little has changed in race

scientists, politicians, and activists

and still the song remains the same

Scholars of the New Left and Neoconservatism alike voice a dismal chorus of failure in the realm of civil rights litigation

# E Q U A L I T Y

Yet equality, as conceived by mortal law and refined by moral law, is a value intrinsic to the beliefs of a Chris-

tian lawyer and an essential objective in an ethical society How can those schooled in the "knowledge of the

laws of man in light of the laws of

The first step must be that proposed



God,"<sup>1</sup> best pursue the path of equality?

by Critical Legal Scholars: reject legal

ideology as the basis of discussion. There is nothing unique or novel in seeking a higher measure of conduct than that of law. Portia, the heroine of Shakespeare's *Merchant of Venice*, reminds us "that in the course of justice, none of us should see salvation: we do pray for mercy."<sup>2</sup> Elder James E. Faust, a member of Quorum of the Twelve Apostles, explained:

*There is a great risk in justifying what we do individually and professionally on the basis of what is "legal" rather than what is "right." In so doing, we put our very souls at risk. The philosophy that what is "legal" is also "right" will rob us of what is highest and best in our nature. What conduct is actually "legal" is, in many instances, way below the standards of a civilized society and light years below the teachings of the Christ. If you accept what is "legal" as your standard of personal or professional conduct, you will rob yourself of that which is truly noble in your personal dignity and worth.<sup>3</sup>*

Ensuring procedural or formal equality is "legal." Achieving equality of condition, in harmony with applicable gospel principles, is "right."

**D**espite traditions to the contrary, no Latter-day Saint can hold any racial or ethnic bias and declare himself consistent with official theology. Elder Hunter, President of the Quorum of the Twelve Apostles, unequivocally repudiated any notion that one race is superior to another:

*The gospel of Jesus Christ transcends nationality and color, crosses cultural lines, and blends distinctiveness into a common brotherhood. All are invited to come unto him and all are alike unto him. Race makes no difference; color makes no difference; nationality makes no difference. As members of the Lord's church, we need to lift our vision beyond personal prejudices. We need to discover the supreme truth that indeed our Father is no respecter of persons.<sup>4</sup>*

Speaking bluntly, President Spencer W. Kimball asked: "What did you do that made you superior to your other darker brothers and sisters?" Take this message back to your people. Racial prejudice is of the devil. Racial prejudice is of ignorance. There is no place for it in the gospel of Jesus Christ."<sup>5</sup>

Prejudice and inequality have plagued the Church from its foundations. Paul wrote to the Saints in Galatia, a commercial center peopled by a multitude of distinct ethnicities, affirming that all are justified in Christ and rejecting the argument that new converts needed to embrace Jewish practice as well as the gospel. Through the covenants of baptism, "there is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus" (Galatians 3:28). Paul does not call upon the Galatians to abandon their respective cultures and heritages. Rather, he gently reminds that we are defined by our

kinship with Christ. Paul firmly instructs the Galatian saints to put off their disputes over conformity, heal the division, and become one.

The Book of Mormon is replete with examples of the consequences of equality and inequality. The people of King Benjamin and his successor son Mosiah aspired to equality and reaped the rewards. King Benjamin told his people:

*And now, for the sake of retaining a remission of your sins from day to day, that ye may walk guiltless before God—I would that ye should impart of your substance to the poor, every man according to that which he hath, such as feeding the hungry, clothing the naked, visiting the sick and administering to their relief, both spiritually and temporally, according to their wants. [Mosiah 4:26]*

Note King Benjamin's stated grounds for charity—to receive a remission of one's own sins! When Mosiah stepped down, and judges replaced the monarch, he told the people that inequality should be no more in the land (Mosiah 29:32). There must have been notable economic disparity, otherwise Mosiah, Benjamin, and Alma would not have commented on the poor, the needy, and the remedy applied to ease their situation.

The people heeded the counsel and example of Mosiah and his father. A moral law was obeyed and the natural consequence obtained:

*And when the priests left their labor to impart the word of God unto the people, the people also left their labors to hear the word of God. And when the priest had imparted unto them the word of God they all returned again diligently unto their labors; and the priest, not esteeming himself above his hearers, for the preacher was no better than the hearer, neither was the teacher any better than the learner; and thus they were all equal, and they did all labor, every man according to his strength.*

*And they did impart of their substance, every man according to that which he had, to the poor, and the needy, and the sick, and the afflicted; and they did not wear costly apparel, yet they were neat and comely.*

*And thus they did establish the affairs of the church; and thus they began to have continual peace again, notwithstanding all their persecutions.*

*And now, because of the steadiness of the church they began to be exceedingly rich, having abundance of all things whatsoever they stood in need—an abundance of flocks and herds, and fatlings of every kind, and also abundance of grain, and of gold, and of silver, and of precious things, and abundance of silk and fine-twined linen, and all manner of good homely cloth.*

*And thus, in their prosperous circumstances, they did not send away any who were naked, or that were hungry, or that were athirst, or that were sick, or that had not been nourished; and they did not set their hearts upon riches; therefore they were liberal to all, both old and young, both bond and free, both male and female, whether out of the church or in the church, having no respect to persons as to those who stood in need. [Alma 1:26–30; emphasis added]*



The "Crits," a new gang in legal academia, appears to be gaining adherents and is now established as a legitimate legal philosophy. These members of the Conference on Critical Legal Studies feel that minorities are ill-served by pursuing legal rights for racial equality. Critical scholars "trash" (delegitimize) false notions to expose distortions in accepted legal theory. By doing so, the Critics hope to precipitate a fresh dialogue based on "solidarity and individuality."

When civil rights objectives are superimposed onto the skeleton of law (a behemoth created to reinforce the majoritarian worldview), the search for equality becomes futile. In path-breaking commentary, Professor Mark Tushnet comments:

*(1) Once one identifies what [is] . . . a right . . . , it invariably turns out that the right is unstable; . . . relatively small changes in the social setting can make it difficult to sustain the claim [of that] right. . . . (2) The claim [of a right] . . . produces no determinate consequences. (3) The concept of rights falsely converts into an empty abstraction (reifies) real experiences. . . . (4) The use of rights in contemporary discourse impedes advances by progressive social forces.*

Thus, rights talk impounds legal dialogue, often staging a showdown between competing rights.

Since law is a stabilizer that maintains the status quo, rapid deviation is both unwise and unjustified. Leading Critical scholar Richard Delgado argues that our legal system serves a "homeostatic function, assuring that society has just the right amount of racism. Too little would forfeit psychic and financial benefits, too much would risk disruption." Yet, to acknowledge that law is hegemonic is to concede the inadequacy of law to constructively disrupt the status quo.

Critics see delegitimation as a transformative tool: once the pursuit of social justice is pared from the framework of law, society can begin to mend itself and construct new social canons. It is the latter half of the equation that is troubling. What phoenix will arise once society is freed by "trashing" of established legal ideology? The Critics stumble in response. They fail to recognize that revolutions and peaceful reforms alike occur largely within the framework of established social order. Civil rights leaders of the '50s and '60s urged protesters to spurn violence and work "within the system," exercising the vote, litigating to vindicate rights established a century earlier in the 13th, 14th, and 15th amendments, and exposing the lawlessness of their opponents. The movement's successes were achieved and sustained by invoking the legitimating power of law. The Critics offer

nothing to replace this power as society's ordering force. One scholar has termed the Critics' inability to proceed beyond their emphasis on delegitimation as "dangerously incomplete."

The past two decades brought yet another new voice in political thought: the Neoconservatives. Neoconservatives suggest that the civil rights movement achieved formal equality, and activists would now profit from redirecting their energies into the core problems of the inner city and away from courts and legislatures. The introduction of racial politics has been polluted by legal ideology, according to Neoconservatives. It is legally sufficient, they claim, to guarantee equality as a process, but not as a result. Otherwise, special interest groups will corrupt processes of law and alienate the majority. As an example, they cite the resurgence in white supremacist organizations as the backlash of introducing racial politics into the realm of law.

Perhaps the most significant contribution of Neoconservative thought is the shift to color-blind notions of equality: a white family in the Bronx has no greater (or lesser) claim to guaranteed income than does the Navaho family in Kayenta, Arizona. By shifting the discussion away from race, one is free to concentrate on economic equality. Neoconservatives offer a concrete

#### RACIAL EQUALITY PRIMER :

#### *Crits and Neos*

plan. They offer a combination of "nose to the grindstone, shoulder to the wheel" philosophy, private initiatives, and severely limited government involvement. With help and direction, some have picked themselves up. Family Self-Sufficiency, a private Charlotte, North Carolina, cooperative, has helped twenty-four families buy single-family homes. The program includes home management and career development training. Three years after inception, all twenty-four heads of household are still employed and living in their homes.

Neoconservatism has its own prophets of doom. One of the new right's most respected analysts, Charles Murray, describes the "dark side" of America's near future. Safely predicting that the rich will be a large segment of America in the coming years, he warns of the "potential for producing something very like a caste society, with the implication of utter social separation that goes with the most un-American of words. . . . As this American caste system takes shape, American conservatism is going to have to wrestle with its soul." Murray's recommendation to fellow Neoconservatives embodies classical conservative principles: "Enforce strict equality of individuals before the law. Prohibit the state from favoring groups, including rich and influential groups."

As the people pursued equality, peace and prosperity followed, and for a season untold riches and commercial success resulted. Yet it was not an invulnerable bliss and could be sustained only as long as equality survived as a living principle.

As the surplus swelled, so did the people's pride, and the heritage of Benjamin and Mosiah was about to be undone. Alma saw it coming; he raised the warning cry. But class division was too enticing to those who had a little more. By segregating themselves and hoarding their possessions, they raised their worldly station a notch or two. It hadn't taken long; a scant eight years had passed from the time Mosiah had warned them to eliminate inequality. Even the elect, the people of the church, "began to wax proud, because of their exceeding riches, and their fine silks, and their fine-twined linen, and because of their many flocks and herds, and their gold and their silver, and all manner of precious things" (Alma 4:6).

The pattern was to be repeated nearly 120 years later, although equality was then to endure as a social condition for four generations. Shortly before his crucifixion and subsequent visit to the American continent, Christ established the one fundamental criterion to be worthy of his name:

*For I was an hungred, and ye gave me meat: I was thirsty, and ye gave me drink: I was a stranger, and ye took me in:*

*Naked and ye clothed me: I was sick, and ye visited me: I was in prison, and ye came unto me*

*Verily I say unto you, Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me.* [Matthew 25:35-36, 40]

"Equality among the Lord's covenant people constitutes the measure of their righteousness."<sup>6</sup> It has been so from the beginning. While establishing Zion among his people, the prophet Enoch warned of the consequences of inequality: "man hates his neighbor" and "covetousness" reigned as the order of the day, for the people had "trusted in [their] riches."<sup>7</sup> The Book of Mormon peoples knew well the warnings of Enoch; shortly before the birth of the Savior, Samuel disdained the class divisions embraced by those infatuated with their riches, quoting Enoch: "The Lord's law of equality is no less explicit in modern scripture. In a revelation describing the function of the bishop's storehouse, the Lord cautioned that 'if ye are not equal in earthly things ye cannot be equal in obtaining heavenly things' (Doctrine and Covenants 78:6). A few

months earlier, the Lord had proclaimed the essential role equality played in promoting the spiritual health of the Church: "Nevertheless, in your temporal things you shall be equal, and this not grudgingly, otherwise the abundance of the manifestations of the Spirit shall be withheld" (Doctrine and Covenants 70:14).

Much of the scripture condemning inequality or establishing the law of equality is stated in the context of economic equality. The sin of esteeming oneself as greater than one's sister or brother is no less pernicious when the bias is based on external, immutable characteristics of appearance rather than on relative economic condition. It is the self-aggrandizement that is privative of the Lord's spirit, for such suggests that Father prefers one child, or group, over another. This is false, for the Lord "inviteth all to come unto him and partake of his goodness; and he denieth none that come unto him, black and white, bond and free, male and female, and he remembereth the heathen; and all are alike unto God, both Jew and Gentile" (2 Nephi 26:33). Joseph Smith taught that our responsibility is to lift up our kindred, whether "black or white, bond or free; for the best of books says, 'God hath made of one blood all nations of men, for to dwell on all the face of the earth'."<sup>9</sup>

**T**oday, as the dogma of "political correctness" has crept into our consciousness, we have learned a new vernacular of code words. For example, when one hears a politician belittling welfare recipients, or members of the underclass,<sup>10</sup> can the audience hold any doubt as to the race and social status and perhaps even the gender of the subject? No modern lawyer would dare publicly remark in a fashion that might be construed as racist, or perhaps even

sexist. Any employment lawyer would shrink at the thought of a client asking a prospective employee how she would perform in light of her obligations to husband and children, or how an applicant would perform as the first minority employee in the shop. Yet few have any such compunctions about revealing class bias. As long as one speaks in code, no one is discomforted. Ruth Sidel, an eminent sociologist specializing in family issues, notes that "when people disparage 'welfare mothers,' it's really [the] code words for the black poor. The term 'underclass' is really a code word for black people. It's very hard to separate our hatred of the poor from racism."<sup>11</sup>

**"What did you  
do that made you . . .  
superior to your  
other darker brothers  
and sisters? . . .  
Take this message  
back to your  
people. . . .  
Racial prejudice is  
of the devil.  
Racial prejudice is  
of ignorance.  
There is no place  
for it in the gospel of  
Jesus Christ."  
—PRESIDENT  
SPENCER W. KIMBALL**



Sometimes, for instance, we readily distinguish between the Wasatch Front poor—those who are experiencing temporary hardship due to a loss of employment, death of a provider, divorce, or some other fate entirely beyond their control—and the teeming masses whose poverty frankly frightens us, or so it should. We are comfortable with the former. We believe that they are safe within the clutches of bishops and ministers, Deseret Industries, and various community charities. They carry themselves in worn, but not tattered vestments, with a noble humility to which we give our approbation. There is no shame imposed thereon by the comfortable in Zion.

It is the latter group that slightly troubles us. We don't openly admit it, but our charity and compassion are generally limited by membership in the Church, or at least persons perceived to be roughly equal in social position. It is a short step from concluding that the poor—or at least most of them—are undeserving. Because the fault for their poverty lies with them, they have no claim on tax funds or charity and have forfeited their right to equality. This conclusion is bolstered by a conviction of poverty's inevitability. Believing that there will always be poor assuages our concerns. Mosiah's people were infected by this attitude, and he cautioned them appropriately:

*And if ye judge the man who putteth up his petition to you for your substance that he perish not, and condemn him, how much more just will be your condemnation for withholding your substance, which doth not belong to you but to God, to whom also your life belongeth; and yet ye put up no petition, nor repent of the thing which thou hast done.*

*I say unto you, wo be unto that man, for his substance shall perish with him; and now, I say these things unto those who are rich as pertaining to the things of this world [Mosiah 4:22–23]*

Inequality and poverty are not inevitable in our society. Several Western European countries have virtually eliminated poverty. Family Self-Sufficiency, a Charlotte, North Carolina, cooperative, has helped twenty-four families buy single-family homes. The program includes home management and career development training. Three years after inception, all twenty-four heads of household are still employed and living in their homes.<sup>12</sup> A small group of activists has raised nearly a hundred people from poverty to a state of self-sufficiency beyond mere survival. The scriptures stand before us as powerful witnesses that inequality need not afflict even

large and complex societies. What, then, is required, and how may a Christian attorney contribute to the effort?

One must first ask God for an abiding conviction of the essential unity of humankind. Reverend Martin Luther King, Jr., taught: "We are tied together in the single garment of destiny, caught in an inescapable network of mutuality."<sup>13</sup> Not long ago, I heard Maya Angelou preach a wonderful sermon. She explained that once she obtained a comprehension of her divine parentage, she was constrained to admit that each man and woman is also a child

of God, and hence her brother and sister in the truest sense. As we seek the Father, we, too, will gain a richer understanding of our familial ties.

Since attorneys are key elements in the structuring and ordering of government and commerce, the Christian attorney must "bring her values into the workplace."<sup>14</sup> Lawyers often counsel and lead their clients or agencies in significant decisions. Leadership toward equality cannot long survive without a spiritual dimension; the countervailing forces of pride, greed, and esteeming oneself as higher than one's sister are potent. The force of litigation should be reserved for the most recalcitrant inequities, in general deference to persuasion and negotiation. Litigation to achieve equality is seldom desirable, often being the aftermath of un-Christian behavior and presaging more of the same. "Mankind's history has proved from one era to the next that the true criterion of leadership is spiritual. Men are attracted by spirit. By power, men are forced. Love is engendered by spirit. By power, anxieties are created."<sup>15</sup> True leaders, says Hugh Nibley, have a "passion for equality."<sup>16</sup>

Many developing, equality-promoting concepts hold great promise. Most cannot be facilitated without attorneys. The Family Self-Sufficiency housing and employment project required many hours from real-estate attorneys. Corporate attorneys must assist in the formation of private undertakings. The

business acumen and steady hand of veteran attorneys can be invaluable on boards of directors.

One of the most promising Neoconservative initiatives, the concept of enterprise zones, is utterly worthless without the services of those skilled in redevelopment and taxation law. Individual small businesses, the sort most likely to employ neighborhood workers, created in those zones need low-cost, start-up legal counsel.

One committed individual can alleviate much suffering. Charles Ballard was alarmed at the number of single mothers in his community. He foresaw the consequences of hundreds

**We don't  
openly admit it,  
but our charity  
and compassion  
are generally limited  
by membership  
in the Church,  
or at least persons  
perceived to be  
roughly equal  
in social position.  
It is a short step  
from concluding  
that the poor—  
or at least  
most of them—  
are undeserving.**



of children maturing without the guidance of a father in the home. Benevolently bold, he launched Teen Fathers of Cleveland, Ohio. Over the past four years, he has persuaded more than two hundred fathers to marry and stay with the mothers of their children—creating a legacy of hundreds of children who now live in two-parent homes.<sup>17</sup> In Salt Lake City, Utah, Reverend France Davis of the Calvary Baptist Church ministered to many elderly who lived in inadequate housing. Mustering his congregation, and securing government financing, he spearheaded the construction of Calvary Tower, a safe and comfortable home for many low-income elderly persons. Reverend Earl Lee, of the Twelfth Street Baptist Church in Detroit, used church funds to buy up crack houses one by one. As the drug dealers were evicted, Lee employed church members to rehabilitate the houses,

creating local jobs. The church extended mortgages to poor, but earnest, church members. In nine years, Reverend Lee and his parishioners have rolled over the funds many times, buying up more dilapidated drug dens. Crime near the church has dropped 37 percent. As Bishop Glenn Pace gently reminds us, we cannot be the salt of the earth if we are lumped together in the cultural hall.<sup>18</sup>

We must allow equality to inform our counsel and choices, professional and personal. Viewing clients' circumstances and needs through the lens of the equality pronounced by the gospel will help inoculate clients from litigation and elevate the profession to its traditional position of respect. For example, a lawyer guided by the ethic of equality while counseling her client in an employment situation may suggest multicultural awareness programs as a tool to

smooth employment relations and increase morale as well as productivity. Is it not more profitable to teach employees about each other than to defend against a discrimination or harassment action? An extended outlook on a client's needs might result in a recommendation that the client actively participate in community education programs, boosting individual employability and strengthening the client's prospective labor pool.

**W**e can be saved from the repercussions of inequality. Parallel to the velocity with which many of the world's totalitarian regimes are crumbling is the immediacy with which the gospel takes hold in those lands as they gain new stability. Is it any less likely that a surge in racial harmony and economic prosperity, obtained through the pursuit of equality, will be accompanied by an outpouring of the Lord's spirit? Mosiah's subjects transformed their society from Zion to one not unlike our present society in eight short years. Hitler steered an entire nation into perverse prejudice and destructive hate in one brief generation. Disaster may yet attend our society if we fail in the struggle for equality.

As we form new circles in our communities, we must be mindful of diverse cultural heritages. Whites must struggle to become conscious of behaviors that minorities may perceive as racist. Minorities should welcome efforts to establish new bonds and strive to eliminate their own racist thinking. We must leave behind the political fray—both the right and the left, and even the middle, have room for “equality activists.” Certainly, there will be risks and fears. Risks are inherent in any worthwhile venture. The Great Emancipator, Abraham Lincoln, implored all Americans to extend “charity toward all.” This was his prescription to “bind up the wounds” inflicted in the course of the Civil War.<sup>19</sup> It is a timeless prescription, first recorded in ancient scripture. Paul described the awful circumstance of one not possessing charity (1 Corinthians 13:3). True charity conducts one to an abiding belief in equality. Steeling ourselves with compassion and charity will ease the growth pains.

*It may well be that the survival of the species will depend on the capacity to foster a boundless capacity for compassion. In the alchemy of man's soul, almost all noble attributes—courage, love, hope, faith, beauty, loyalty—can be transmuted into ruthlessness. Compassion alone stands apart from the continuous traffic between good and evil proceeding within us. Compassion is the antitoxin of the soul. Where there is compassion, even the poisonous impulses remain relatively harmless.*<sup>20</sup>

Counselors at law ought to be “apostles of equality.”<sup>21</sup> Equality must become a beatitude of personal and professional life. “Behold, this I have given unto you as a parable, and it is even as I am. I say unto you, be one; and if ye are not one ye are not mine” (Doctrine and Covenants 38:27).

## NOTES

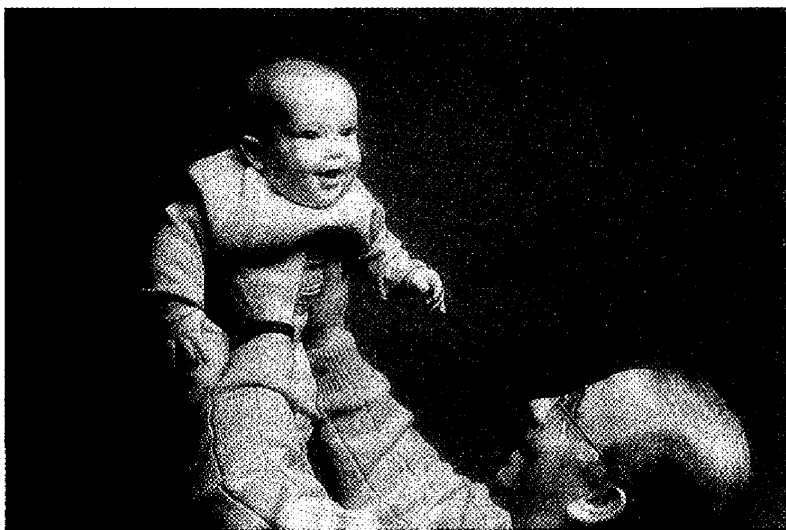
- 1 Marion G. Romney, Address and Dedicatory Prayer for J. Reuben Clark Law Building, 5 Sept. 1975 (copy in author's possession).
- 2 *The Merchant of Venice*, act 4, sc. 1, ln. 200.
- 3 James F. Faust, “The Study and Practice of the Laws of Men in Light of the Laws of God,” *Clark Memorandum* (Fall 1988): 20.
- 4 Howard W. Hunter, “All Are Alike unto God,” *Ensign* (June 1979): 72, 74.
- 5 *The Teachings of Spencer W. Kimball*, ed. Edward Kimball (Salt Lake City: Bookcraft, 1982), 236–237.
- 6 Avraham Gileadi, *The Last Days*, 2d rev. ed. (Salt Lake City: Deseret Book, 1991), 200.
- 7 James H. Charlesworth, ed., *The Old Testament Pseudepigrapha: Apocalyptic Literature & Testaments*, vol. 1 (New York: Doubleday & Company, Inc., 1983), 1 Enoch 84:8, 2 Enoch 34:1–2.
- 8 Cf. Helaman 13:21–22, with 1 Enoch 84:8; see Hugh Nibley, *Enoch the Prophet* (Salt Lake City, UT: Deseret Book Co.; Provo, UT: Foundation for Ancient Research and Mormon Studies, 1986), 71, 86.
- 9 See Joseph Smith, Jr., *Times & Seasons* (Nauvoo, IL: Times and Seasons, 1971), 5:28–33 (citing Acts 17:26); quoted in Martin B. Hickman, “The Political Legacy of Joseph Smith,” *Dialogue* 3 (Autumn 1968): 22, 29.
- 10 Gunnar Myrdal, *Challenge to Affluence* (New York: Pantheon Books, 1963), 34. Swedish social commentator Gunnar Myrdal coined the term “underclass” to represent the lower economic strata of society, that group believed to be destined for permanent poverty.
- 11 “Bigotry Shifts Its Emphasis: Poor Are the New Target,” [Minneapolis] *Star Tribune*, 28 Dec. 1991, sec. 1E. Ruth Sidel is the author of *Women and Children Last: The Plight of Poor Women in Affluent America* (New York: Viking, 1986).
- 12 *Id.*
- 13 Martin Luther King, “Nobel Prize Acceptance Speech,” in *Negro History Bulletin* (May 1968): 22.
- 14 Joseph Aligretti, “Christ and the Code,” *Clark Memorandum* (Fall 1990): 16, 23.
- 15 *The Autobiography of Malcolm X* (New York: Grove Press, 1965), 424.
- 16 Hugh Nibley, “Leaders and Managers,” Commencement Address at Brigham Young University, 19 Aug. 1983, *Speeches of the Year* 1982–83 (1983): 184, 186.
- 17 “What We Can Do Now,” *Fortune*, 1 June 1992, 41.
- 18 Bishop Glenn L. Pace, “A Thousand Times,” *Ensign* (Nov. 1990): 10.
- 19 Second Inaugural Address, reprinted in Diane Ravitch, ed., *The American Reader: Words that Moved a Nation*, 1st ed. (New York: HarperCollins, 1990), 153.
- 20 Eric Hoffer, “Beware the Intellectual,” *The National Review* 28 (Sept. 1979): 11.
- 21 Matthew Arnold, *Essays in Criticism* (London: MacMillan and Co., 1865), ii.

Kenneth R. Wallentine, '90, practices with Parsons Behle & Latimer in Salt Lake City. This article was written in response to the dean's invitation for further discussion of the theme introduced in Joseph Aligretti's article, “Christ and the Code.”



# P O R T R A I T S

---



*Dean H. Reese Hansen  
and his grandson, Chad*

**H. REESE HANSEN**

A MATTER OF BALANCE

Dean H. Reese Hansen had a "Week to Remember" during March 1990. Two days after President Rex E. Lee announced his appointment as dean of the J. Reuben

Clark Law School, Reese was called to be president of the Provo Utah Sharon East Stake. As though those two new roles were not enough to adjust to, Reese became a first-time grandfather shortly after.

Beyond his teaching and administrative assignments at the Law School, Dean Hansen continues to serve prominently in the academic, legal, and university communities. He serves as a member of the Finance and Legal Affairs Committee of the Law School Admissions Council. Reese is also working with the Central Eastern European Law Initiative. This ABA organization includes practitioners, judges, and legal educators dedicated to helping the

countries in Eastern Europe make the transition to a private property and free enterprise system.

Dean Hansen is working on another international project developing an exchange program between U.S. and Australian law schools. He views this as an important link because Australia is a key country involved in the legal work on the commerce between the Far East, the United States, and Canada.

Dean Hansen also continues his significant work with the Commission on Uniform State Laws. Reese reports, "Because of the tedious and technical nature of drafting statutes, states have been very receptive to the uniform laws." Because it affects his area of expertise, the commission's work on the Uniform Probate Code is of particular interest to Dean Hansen. As a result, he is currently serving as a member of the drafting committee considering uniform legislation on improving investor rules for trustees.

Dean Hansen meets monthly as an ex-officio member of the Utah Bar Commission and serves on a committee dealing with admission to the Utah Bar. That committee recently substantially revised the methods of testing for and procedural rules governing admission to the Utah Bar.

Although many pending projects at the Law School are vital to its continuing progress, when asked to single out one crucial area, Dean Hansen points to the recently approved expansion of the law library. This addition will provide for the next 20 years' growth of the library collection.

To keep pace with the demands of his schedule, Reese makes running a part of his regular routine. He can often be seen "in stride" with fellow law professors, other university colleagues, and President Lee. When he has a moment to unwind, the dean can be found doing woodwork and home repairs. His wife, Kathryn, reports she has never had to call a repairman because Reese can fix everything from plumbing to automobiles.

Spending time with Kathryn, their four sons and their families would, no doubt, be Reese's first choice of activity. Half the Hansen sons are keeping with their father's legal tradition: Brian is an attorney in Salt Lake City, and Dale is a first-year law student. Mark is pursuing a career in medicine, and Curtis recently completed his mission in Latin America and is continuing his studies at BYU.

Dean Reese Hansen is a man of varied interests and responsibilities. One cannot help but marvel that he maintains such balance as he fulfills his many roles.

## EDWARD L. KIMBALL

### CIVILITY IN CRIMINAL LAW

Professor Edward L. Kimball has proven that crime does pay. He has made a living by teaching criminal law and procedure for the past 36 years. Ed started teaching at the University of Montana, moved to the University of Wisconsin after five years, and then joined the original faculty at BYU in 1973.

Professor Kimball is a collector. He clips "Criminals Are Stupid" tales and was instrumental in publishing a 1990 booklet of such stories as a tribute to Woody Deem, his long-

*Edward L. Kimball*



time co-teacher of criminal trial practice. He also collects weird news items and reports about outrageous legal claims. These go into files labeled "The Nerve of Some People" or "Chutzpa." A recent story that caught his eye involved Illinois lawyer Alan Schroeder, who continued to represent clients in court while awaiting trial for having sold drugs. His own case was on continuance while psychiatrists evaluated his claim that he was incompetent to stand trial because he was unable to comprehend the proceedings against him or assist in his defense.

Professor Kimball has had firsthand experience with some of these bizarre accounts. "Husband shoots wife in head during a drunken fight, doesn't take her to hospital until a week later because wife thought she had a hangover." This headline sounds like a lead for a supermarket tabloid, but it is just one of the many cases that Ed has encountered as he has served as a member of the Utah Board of Pardons. He is currently a pro tem member of the board.

Along with his role on the board of pardons, Professor Kimball has served on the Utah Supreme Court Advisory Committee on Evidence since its inception many years

ago, "he who writes the minutes makes the policy" at the margin. Besides being the faculty scribe, Ed serves on the Faculty-Student Diversity Committee, directs the professional responsibility program at the Law School, and chairs the committee on promotion and tenure. He is the only faculty member who has served continuously since the Law School opened its doors in 1973, 39 semesters ago.

Ed acknowledges workaholicism, and his list of pending projects and cluttered office confirms his self-diagnosis. Among these projects in process are articles on the common law in Utah Territory, Part III of a Utah Evidence

Code analysis with U.S. magistrate Ronald Boyce, and the priest-penitent privilege, especially as it relates to child abuse. In addition, he is working on a book about the professional career of Frank Remington, a major scholar in the field of criminal justice administration, and on a book about the ecclesiastical administration of his father, Spencer W. Kimball.

Ed and his wife Bee are proud of their four sons and three daughters—two lawyers, an economics professor, a special education teacher, a doctor, an engineering student, and a missionary. The six married children have provided their parents with 17 "remarkable" grandchildren.

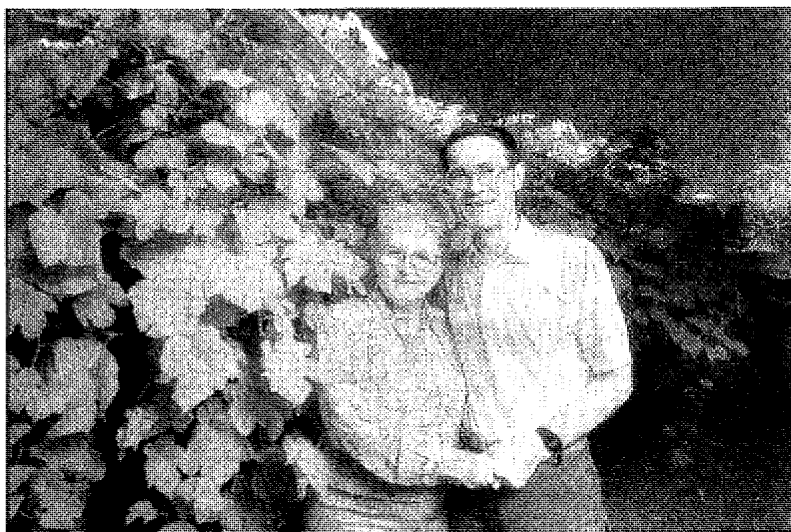
Professor Kimball is puzzled by his "tough" reputation among students. To the contrary, he would describe himself as a shy, sentimental bow-tie wearer who

says "yes" too often. And he has a sense of humor, too. He once placed a "For Sale" sign on Bruce Hafen's car while it was parked in the dean's spot at the Law School.

#### ROBERT E. RIGGS

#### ANOTHER BEGINNING

*I*t's been a wonderful 17 years," observed Professor Robert E. Riggs on his recent retirement from the BYU law faculty. However, as Bob exits one classroom in



*Robert E. Riggs and his wife, Hazel Dawn*

ago. Most recently, it recommended and the court adopted a set of privilege rules. Ed is also a member of a committee currently considering new Utah sentencing guidelines. The committee hopes to propose alternatives to prison time to help alleviate potential overcrowding of present facilities. Another committee Ed serves on drafts the evidence questions for the multistate bar examination.

Although he contributes extensively through committee work and writing, Professor Kimball feels strongly about his service in-house at the Law School. He has kept faculty meeting minutes from the beginning, believing that because many decisions are made without precise lan-



Provo, Utah, he merely enters another in Budapest, Hungary. This fall he steps behind the lectern as a professor in Central European legal studies. The program is taught in English to students from many different countries who are pursuing an LL.M. in comparative law.

Professor Riggs is no stranger to life's changes that affect him professionally and personally. After establishing himself as an outstanding scholar early in his academic career, Bob took a military "detour" and later served a mission in England before returning to his scholastic pursuits. While following a track leading to a professorship in political science, Bob and Hazel Dawn, his wife, decided the time was right for him to pursue one of his long-time goals, attending law school.

After a distinguished law school experience, Bob was headed toward practice when he met a dynamic young law graduate named Rex Lee. They were both studying for the Arizona bar exam. After just one year as a private practitioner, Bob found himself back on the academic scene, this time teaching political science at the University of Minnesota. While there, Bob "dabbled" in local politics and won two elections. When his bid for the U.S. Congress was not successful, he promptly received a telephone call from Rex Lee (then the founding dean of the new J. Reuben Clark Law School) inviting Bob to join the faculty.

Professor Riggs' service at BYU, both in and out of the classroom, has been exceptional. This fall he was recognized for his excellence in teaching when he received the Karl G. Maeser Award. In addition, he has served twice as bishop of a student ward. Bob has willingly accepted numerous committee assignments at the Law School and the university. Most recently, he has served as a member of the BYU Honor Code Advisory Council. This committee was responsible for rewriting the honor code and the dress and grooming standards.

Since 1988 Professor Riggs has served as committee chair for the Utah Advisory Committee to the United States Commission

on Civil Rights. This committee meets periodically to consider timely issues within the state that relate to civil rights. The members have recently completed a study of the impact of the Immigration and Control Act on individuals residing in Utah. The committee has also studied possible discrimination against ethnic minorities in worker's compensation claims and discrimination in the salaries of professors at the state's universities.

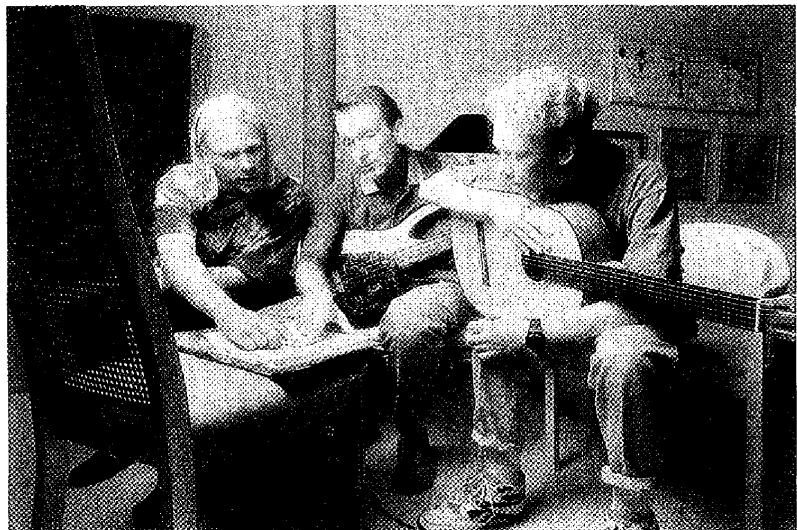
As for other "beginnings" on his horizon, Bob plans to complete an undergraduate textbook on the United Nations for political science classes, keep closer tabs on his seven children and their families, and continue to chalk up the miles jogging. And there is always the matter of some unfinished business between him and a trout in one of Utah's streams.

#### GERALD R. WILLIAMS

#### VARIETY IS THE KEY

A leading scholar in the field of negotiations, Professor Gerald R. Williams believes in a life of variety. For example, Gerry is a music lover who appreciates everything from classical pieces to country western tunes and is currently taking bass guitar lessons with his two sons. With his

*Gerald R. Williams  
and his sons Michael  
(left) and Daniel (right)*



wife, Claudia, he enjoys grandparenting, jogging, scuba diving, and studying psychology. Gerry appreciates being more involved in "domestic affairs," as he supports Claudia's efforts to receive her master's degree in social work at BYU.

On the professional scene, Professor Williams continues his efforts to fight the high costs of traditional litigation through the methods of alternative dispute resolution (ADR). He is in his third year as a member of the American Bar Association's Standing Committee on Dispute Resolution. According to Williams, each year the committee receives well over 10,000 inquiries about how to solve problems through ADR. For example, the committee has been working with state attorneys general and has compiled an instruction book explaining how to implement alternative dispute resolution. Gerry notes, "This project is having a major impact across the country."

Professor Williams, along with Professor Larry Farmer and three other authors, recently published an article on ethical behavior among lawyers engaged in negotiations. "There is a debate over the foundation for ethical behavior: Is it an 'ethic of justice' or an 'ethic of care'?" He explains, "Justice is the concept of treating all people equally, while care is more concerned with finding a solution that works for the individuals involved."

The article reports that, generally, males are more justice oriented while females are more care oriented. However, such a gender-based distinction does not necessarily exist among lawyers. Male lawyers are slightly more care oriented than female lawyers, and the two groups are essentially equal in justice orientation. Before this latest research these two qualities had been viewed as mutually exclusive, but the article suggests the more effective negotiators respect justice and care, incorporating both into their style.

Professor Williams recently completed work with the ADR subcommittee of the Civil Justice Reform Act Advisory Committee for the federal district court in Utah. The act is causing what Gerry terms "massive repercussions." His assignment was to construct a plan for making alternative dispute resolution available in Utah's federal courts. With work on the subcommittee now completed, he has moved on to

the ADR Development Committee, which is working on implementation of the plan. He hopes that, because of the committee's efforts, court-annexed ADR will be available in Utah soon.

Professor Williams also finds time to teach negotiations courses to lawyers from developing countries, to serve on the board of directors for the American Arbitration Association, and to be a member of the judicial panel for the Center for Public Resources in New York City. In addition, he is a member of the editorial boards for the *Negotiation Journal*, the *American Arbitration Journal*, and the *Alternatives to the High Cost of Litigation Journal*. All these publications promote alternative dispute resolution.

#### MARY ANNE Q. WOOD

#### THE ACTIVE LIFE

Although leisure time is at a premium in this season of Professor Mary Anne Q. Wood's life, she manages to pack those precious moments full of activity. Mary Anne enjoys triathlons; mountain biking with her husband, Steve (and any of their five children that can be persuaded); snow skiing; visiting the national parks in and out of state; and four-wheeling.

Her professional life is also filled with stimulating activity. Professor Mary Anne Wood's firm, Wood & Wood, is handling the defense of the Utah abortion statute. With the recent decision by the Supreme Court in *Casey v. Reproductive Health Services*, which Mary Anne characterizes as "a surprising reaffirmation of *Roe*," the status of portions of the Utah statute are in question. Still, Professor Wood feels the task has been exciting and enjoyable.

While her work with the abortion defense may be the one that captures the front page of local newspapers, it is far from her only project. Mary Anne also spends time as a member of the board of trustees for Utah Valley Community College and the Utah Supreme Court Advisory Committee on the Rules of Civil Procedure. In addition, she is an active member of the Utah Constitutional Revision Committee, a standing committee

that recommends changes to the Utah Constitution

Mary Anne is also dedicated to fund raising for several groups, including the Provo-Jordan River Parkway Foundation, which raises money to develop a parkway along the river. She is also a member of the executive committee for the Thrasher Research Fund, a charitable trust administered through the LDS Church.

Professor Wood conducts regular training sessions on employment issues for in-house counsel for corporations and for groups of employers. She has also presented many seminars and prepared briefing materials on the American Disability Act and how it applies to employers.

With her active life-style and so many professional commitments, one would wonder how Mary Anne refuels her personal fires. A source "close to the subject" reports that shopping outlet stores, teaching interactive classes, and reading romantic literature (particularly Jane Austen) seem to accomplish that task for Mary Anne.

STEPHEN G. WOOD

BUILDING BRIDGES

According to his wife, Mary Anne, Professor Stephen G. Wood is the consummate mediator. Whether he is marshalling parental support to organize Meridian School, hosting visiting foreign dignitaries, or settling disputes on the home front, Steve's diplomatic skills are an asset.

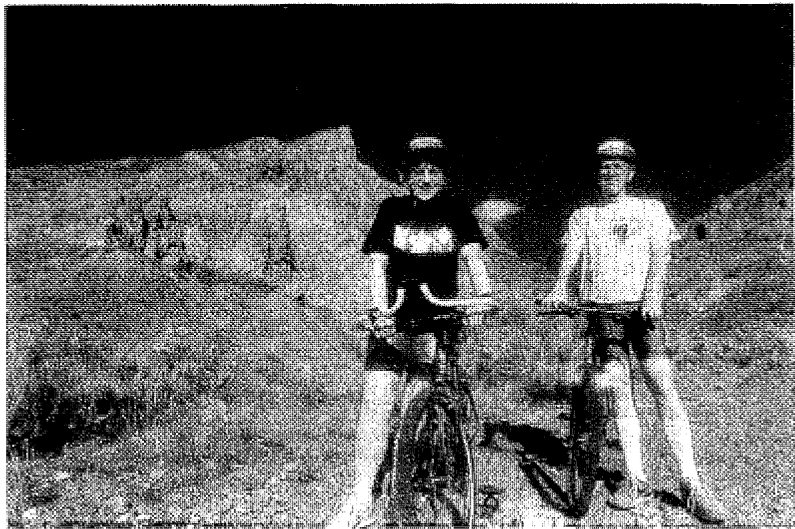
When the Waterford School decided to pull out of Utah Valley, Steve stepped in to provide the leadership necessary to establish a private school. As chair of its board of trustees, he helped parents, students, and others in making unique contributions to the school's programs.

Professor Wood delights in hosting foreign visiting professors, practitioners, and students. Even when language barriers exist, Steve's fluency in "people language" comes through to build goodwill.

What happens when technology concerns and privacy concerns intersect? This intriguing question is one that Professor Wood has set out to answer. After a presentation to an ALI-ABA meeting in Boston on privacy in an information society, Steve began a multidisciplinary research project with Ned Hill and Gloria Wheeler of BYU's Marriott School of Management. In commenting about this venture, Professor Wood states, "I am excited about this project—I don't foresee a more important problem arising in the next 20 years."

Always interested in international legal issues, Steve is also just completing a research project on the executive branch regulation of foreign direct investment in the United States. He sees this as an intriguing issue in the post-cold war era.

The Law School's LL.M. in comparative



*Stephen G. and Mary Anne Q. Wood*

law is also at the hub of Professor Wood's activities. With the help of several assistants, a recruitment brochure has been translated into French, Spanish, and German. Steve hopes to have a system in place that will enable the school to have its full contingent of eight LL.M. students each year.



# A CAMELOT

ON JULY 13, 1994, live from the Rose Bowl, nearly one-third

of the world population will witness the opening kick of the World Cup championship game.

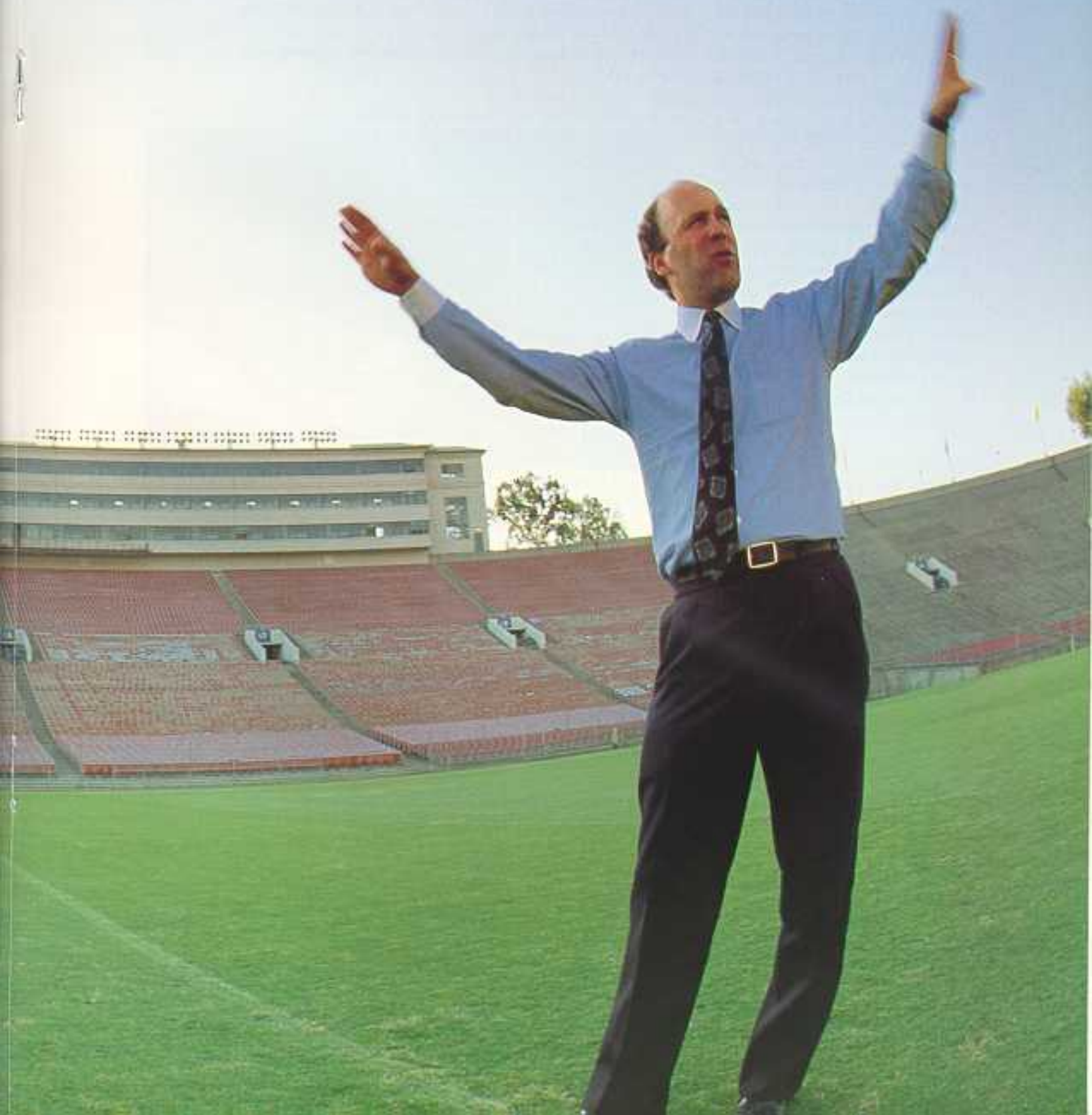
As managing director and CEO of World Cup USA 1994, Inc., **SCOTT LETELLIER** '78 is at the heart

of the competition. In this interview by **LEW CRAMER** '76, Scott shares some of his insights

and experiences while looking forward to 1994.



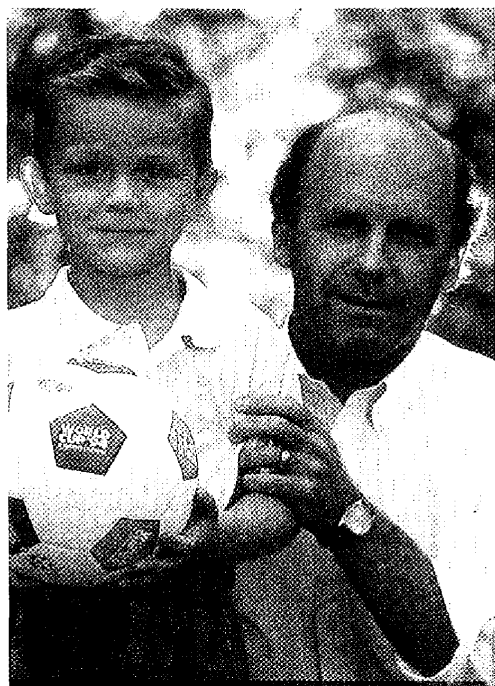
# FOR SCOTT



**LC:** Tell us about the 1994 World Cup and the challenges you face in preparing for it

**SL:** The 1994 World Cup will be the largest peacetime event in the history of mankind. Over 1.5 billion people will watch the final game in all countries of the world. The event is held every four years, most recently in Italy in 1990, but it has never been held outside Europe or Latin America. Twenty-four nations, including Germany as defending champion and the United States as host country, will compete for the World Cup trophy during a 30-day period in June and July of 1994. Nine communities, ranging from New York to Los Angeles, have been selected as venue sites after several months of rigorous bidding. Although we have rapidly growing soccer participation in the U.S., we are only beginning to show television and spectator interest in the sport. Our challenge is to translate this participation into spectator and television demand, both for the 1994 World Cup and for a new national professional league.

**LC:** How did you become interested in sports law, and how did you get your start in the field?



**SL:** My father was the team physician for the Milwaukee Braves and later for the Milwaukee Bucks. I have always shared his deep interest in sports and hoped to combine my professional and personal interests the way he has. When my father's pathologist friend invited us to witness an autopsy, I nearly passed out. It was then that I knew my future was in law, not medicine.

In 1976, during my first year in law school, Major League Baseball Commissioner Bowie Kuhn voided the Oakland Athletics' sale of Rollie Fingers, Vida Blue, and Joe Rudi to the New York Yankees and the Boston Red Sox. The A's owner, Charlie Finley, in turn sued Kuhn in a case labeled the "baseball trial of the century." That summer, as the case unfolded in Chicago's Federal District Court, I followed the developments closely in the Chicago newspapers while working as a tennis pro in Wisconsin. Finley's lawyer was Neil Papiano of Los Angeles, so I decided to see if I could get a summer clerkship with Papiano's firm the following year. I scheduled an interview with Papiano during the fall of my second year (around a Dodgers' game) and was offered a job at Iverson, Yoakum, Papiano & Hatch. I was able to participate in the trial of the Finley case that December while home for the Christmas holidays, and I eventually helped draft the petition for a writ of certiorari to the Supreme Court.

**LC:** What are some of your best memories of law school?

**SL:** In those early days, there was a sense that all of us, both faculty and students, had a mission to achieve—full accreditation and professional respect

Though Scott has

been to nearly all of the world's

pinnacle sports events, he said none were

more exciting than his five-year-old

son's first soccer game.

Billy scored three goals.

Neither was assured when we started. This led to a closer relationship between faculty and students. Many other law schools had a certain mean-spirited, survival-of-the-fittest mentality that ours managed to avoid, while still establishing a rigorous curriculum. I think in particular of Woody Deem. As traumatic as his on-camera prosecutorial questioning was, he never crossed the line between instructing and demeaning. Also, Rex Lee was and is an inspiration to all of us. He was particularly gracious when he found that his budget paid the printing costs for *Incites*, an early student scholarly publication that I edited (*Incites* was the first "real" student publication at the JRCLS; please ask older graduates for details).

Certain courses have been especially helpful in both my prior practice and my current position. Courses by Dwight Drake on tax law and advising closely held companies and Reese Hansen's Commercial Code courses were particularly useful in my practice of corporate and securities law. In my last year of law school, I undertook an invaluable sports-law, directed-research program under David Barber, who taught corporate and securities law.

As I suspect is the case with many of us, I now appreciate more the Law School and the unique experience we had.

**LC:** What advice do you have for current students interested in sports law?

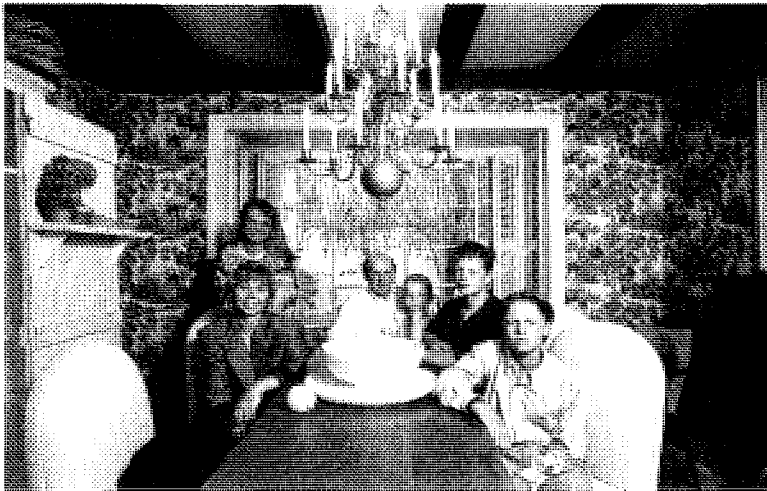
**SL:** Sports law is a misnomer. In reality, it embraces all traditional practice areas—tax, antitrust, corporate, litigation, labor, etc.—applied to an entity



engaged in some facet of the sports business. The best possible preparation for a career involving sports law is an excellent legal education and further experience in one or more of the traditional areas. Unless the student's interest is in athlete management (which is a world unto itself), I would find out which firms represent the major teams in the city where I want to live. Then I would seek a clerkship

responsible for bringing the Olympics to Los Angeles. In 1981 I took a leave of absence from the Iverson firm to work full-time for the Los Angeles Olympic Organizing Committee (LAOOC). While there, I was responsible for 11 different sports, including soccer, baseball, and the equestrian events. I eventually became legal counsel with responsibility for negotiating stadium agreements with the major

Germany hosted, and won, the 1974 World Cup. I became a passionate fan of the sport and watched every minute of Germany's games on television. I returned home determined to become involved in soccer, which I felt would eventually catch on in the United States. While in law school, I contacted the president of the United States Soccer Federation (USSF) and expressed my desire to become



After the announcement that the World Cup finals will be in the Rose Bowl, Scott consolidated headquarters in LA and moved his family back to Southern California (left to right, wife Sherry, Amber, Scott, Billy, Cameron, and Graham "G.T.")

or associate position with such a firm and ask to become involved with the sports clients they represent. New York and Los Angeles are the main locations for firms with significant sports emphases.

**LC:** You played an important role in the 1984 Summer Olympic Games in Los Angeles. How did the 1984 Olympics prepare you for your current post?

**SL:** I had decided to practice law in Los Angeles principally because of opportunities in sports law and because the International Olympic Committee had awarded the 1984 Olympic Games to Los Angeles while I was in law school. My resolve to work for the 1984 Olympics came while attending the 1976 Olympic Games in Montreal. Noel Hatch, an LDS partner in the Iverson firm, introduced me to John Argue, the attorney mainly

Olympic venues such as the Los Angeles Memorial Coliseum, the Rose Bowl, and the Forum. Working from the office next to that of LAOOC President Peter Ueberroth, I learned how to stage an event of an Olympics or World Cup magnitude. Also, I had the opportunity to develop close personal relationships with the leaders of soccer's world governing body, the Federation Internationale de Football Association (FIFA) in Zurich, which helped me gain my current position.

**LC:** How did you become interested in soccer?

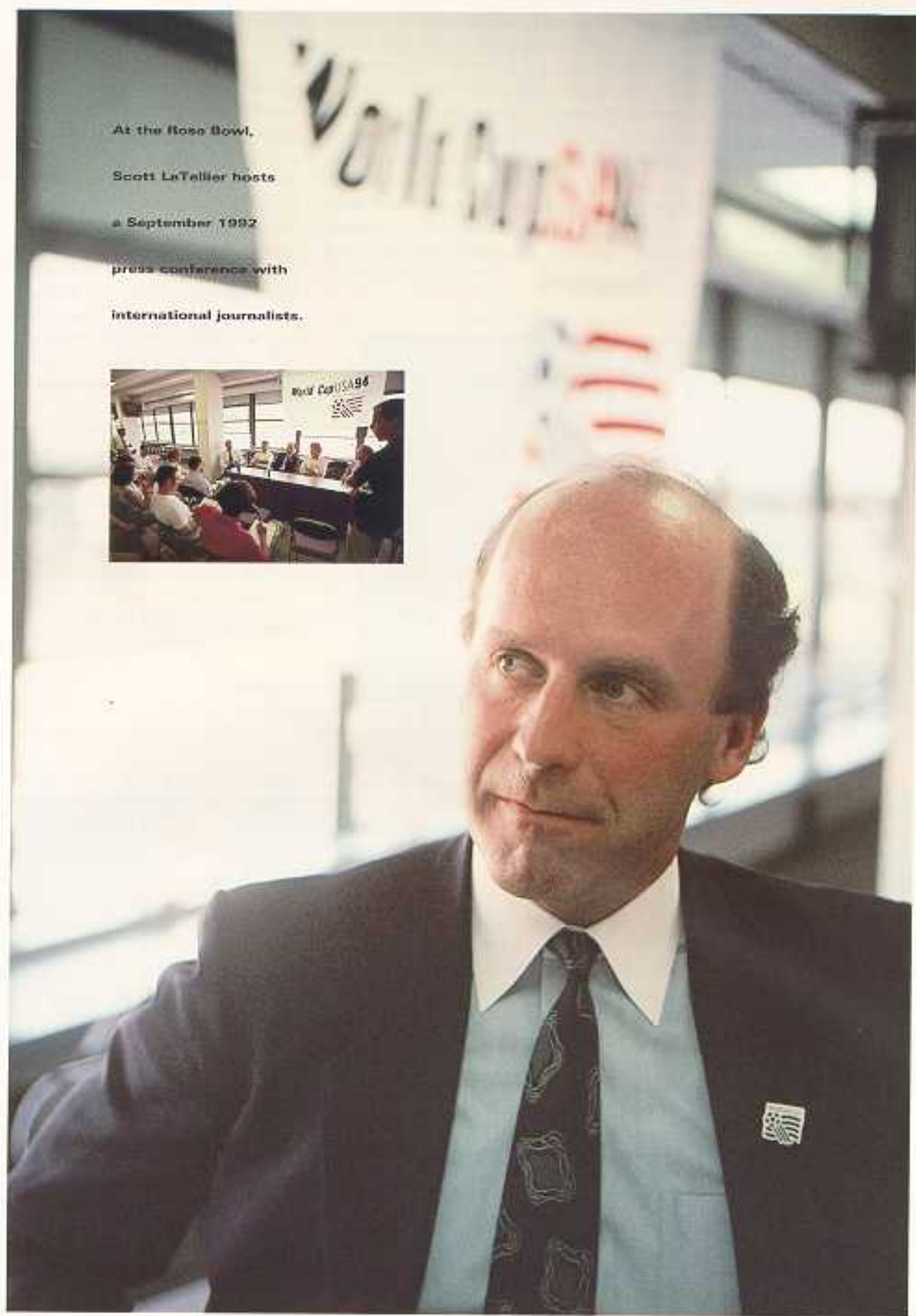
**SL:** I had a typical American sports upbringing—baseball, football, basketball—with no exposure to soccer. While on a tennis scholarship at the University of Tennessee, I joined the Church and then served two years in the Germany Munich Mission. During the last year of my mission, West

involved with the sport. I was referred to the Southern California state soccer association, which I later represented in various legal matters and at the annual USSF meetings. I was eventually asked to chair several USSF committees.

**LC:** How have the preparations for the 1994 World Cup affected your personal and professional life?

**SL:** After the Los Angeles Olympics were over, I moved with my family to Orange County and built a corporate and securities practice in the Newport Beach office of Pettit & Martin. Peter Ueberroth and several other individuals I had met while working with the LAOOC helped me get established. So did Marsh Tanner, a BYU graduate who was managing partner of that office. Our family had a very comfortable life-style, and I fully expected to remain there for many years.

At the Rose Bowl,  
Scott LeTallier hosts  
a September 1992  
press conference with  
international journalists.



In order to meet  
the heavy demands,  
Scott immersed  
himself in  
state-of-the-art  
computer  
technology,  
including a  
program that  
calculates his golf  
handicap.

In 1987 the USSF decided to bid for the 1994 World Cup, and I was retained to do the contract work with potential stadium sites in the United States. Later, I wrote the U.S. bid document and prepared all of the government guarantees from President Reagan and various agencies of government. On July 4, 1988, FIFA selected us to host the event. Shortly after, I was asked to leave my law practice and head the organizing committee. We decided to establish our office in

Washington, D.C., to take advantage of the favorable time differential with Zurich, to consolidate the government relations office needed in Washington, and to be close to our television and marketing interests in New York. Because the Rose Bowl in Pasadena will be the host for the 1994 finals, we have since consolidated our headquarters in Los Angeles, although we maintain a Washington office and a New York media office. We now have a full-time staff of 60, which is projected to grow to 200, along with thousands of volunteers. My family and I moved back to Southern California this summer.

An especially enjoyable part of my efforts for the 1994 World Cup has been the chance to work with other J. Reuben Clark Law School alumni such as Boyd Black '78 of Latham & Watkins, and Mike Jensen '78 of Luce, Forward, Hamilton & Scripps. Both are counsel (tax and labor law, respectively) to our organizing committee. Gordon Gee (former associate dean) is the president of Ohio State University and was active on behalf of Columbus' efforts to become a World Cup venue. Jeff Jones '78 of Kim & Chang hosted our observation team during the 1988 Olympic soccer tournament in Seoul.

Rondo Fehlberg '79 of Pennzoil in Houston handled several special projects for us when he lived in London, and he attended the 1990 World Cup in Italy as a member of our observation team. We rely on Lew Cramer '76 of U.S. West Communications to introduce us to anyone important in Washington.

**LC:** How do you balance career, family, church, and personal demands?

**SL:** Probably as awkwardly as the rest. I did decide about three years ago that the balance we all seek would be easier if I learned to use the computer technology, which has only become available since we graduated from law school. I gave up watching most sports on television and immersed myself in learning various software programs to help organize both my private and professional life. I do all my personal finances and prepare my taxes on the computer, and I use a sophisticated information system to manage my business. Most important, I run a program that calculates my golf handicap. Our offices have a state-of-the-art computer system tailored to our needs in coordinating wide-ranging venue sites, and everyone on our staff either already is or is

rapidly becoming computer literate. With the desktop and notebook computers, electronic mail, network scheduling, relational database, and word processing software used by our staff, we have greatly reduced traditional clerical roles, which is vital in staging the event within our limited operating budget.

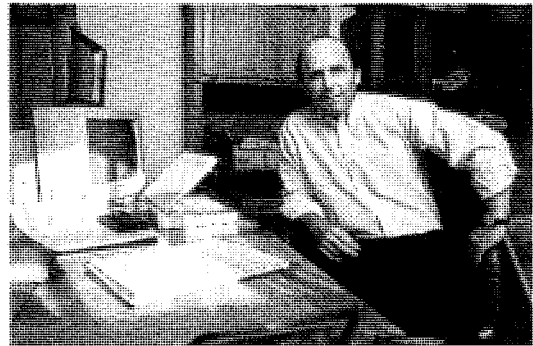
**LC:** What can you possibly do after the 1994 World Cup to match its excitement and challenge?

**SL:** No earthly event can rival the Olympic Games or the World Cup in scope. I really have not made any definite plans after 1994, but I suspect I will be doing something closely involved with sports. It would be diffi-

cult to go back to private practice after being away for five years, but I really enjoyed working with Pettit & Martin, and the firm has held the door open for me to return.

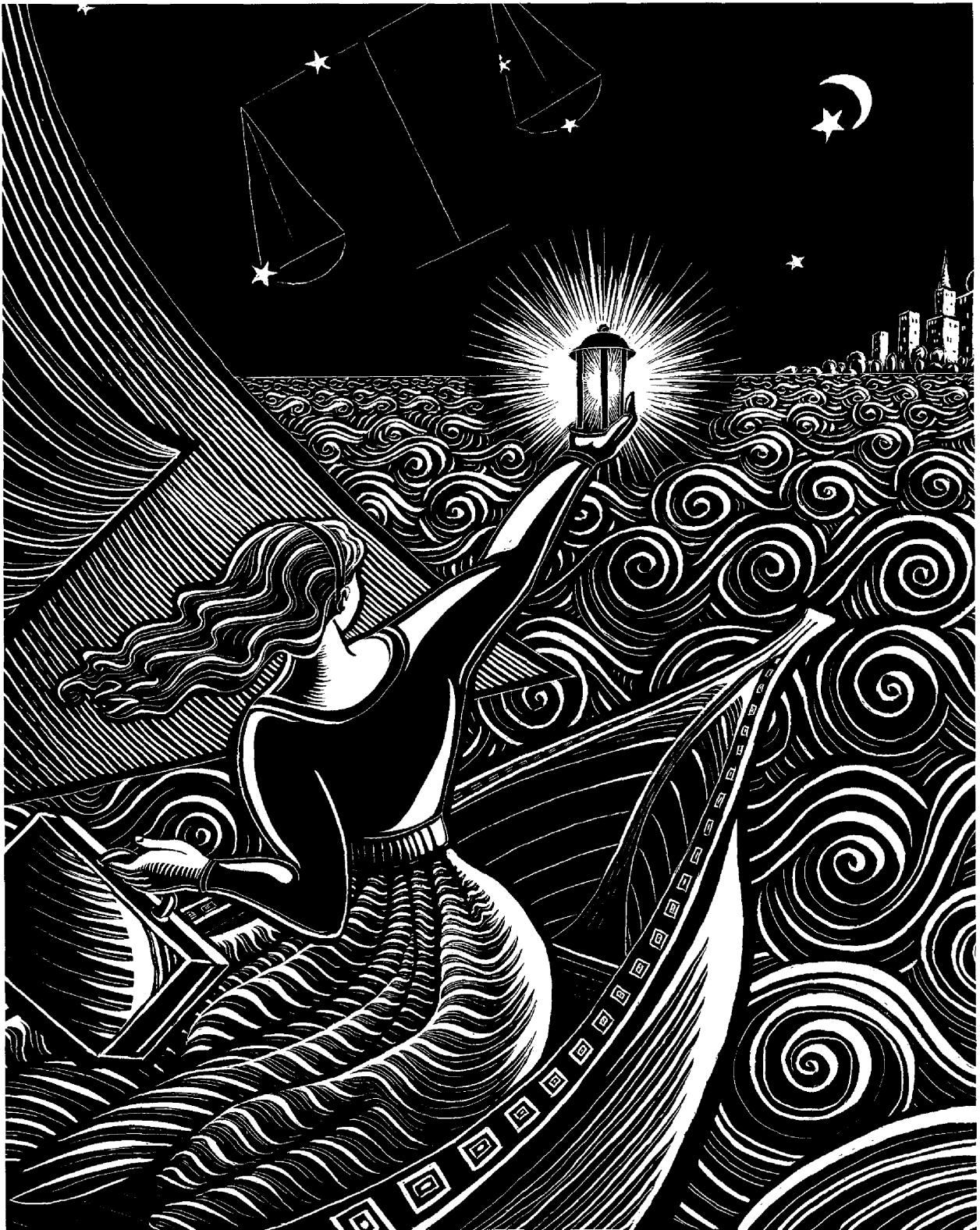
**LC:** I remember you telling me about your 14 lifetime goals while we were young lawyers in Los Angeles. Have you achieved them?

**SL:** One goal I had as a teenager was to attend each of the 14 pinnacle sporting events: the World Series, the Super Bowl, the Kentucky Derby, the Indianapolis 500, the Masters, a heavy-weight championship bout, Wimbledon, the World Cup, the Olympic Games, the Olympic Winter Games, the Stanley Cup, the NCAA Final Four, the NBA playoffs, and the Rose Bowl. Only the Stanley Cup, the Indianapolis 500, and Wimbledon (projected 1993) remain. Sacrifices had to be made—for example,



I had to drop out of the second semester of Civil Procedure during my first year of law school because the final conflicted with my tickets to the Kentucky Derby. Best of all, I have a wonderfully tolerant wife who has agreed that we will take family vacations during odd-numbered years and attend the Olympic Games and the World Cup in each even-numbered year for the rest of our lives.

*Lew Cramer is a member of the Law School's charter class. He is currently vice-president of U.S. West, responsible for its international political relations. During the Reagan administration he served as the director general of the U.S. and foreign commercial service and as assistant secretary of commerce.*



# HEROES FOR

# OUR TIME

**F**OR THE LAST 25 YEARS, the legal profession has been experimenting to learn whether requiring lawyers to follow detailed rules would improve professional conduct. I describe the effort as an experiment, because we so

quickly forget that rule-oriented legal ethics is really a recent development ■ Most of today's graduates were born before 1969, the year the ABA published its first Model Code of Professional Responsibility. That code was widely adopted by the states, but it proved so problematic that by 1983, when

*Going Beyond Ethical Codes* most of you were at least in high school,

the ABA had adopted a new set of standards, the Model Rules of Professional Conduct ■ At least two-thirds of lawyers now in practice received their ethics training under these sets of standards, so we tend to think they have governed us forever. A century ago, however, only Alabama had codified even general requirements for lawyer behavior, the "canons" of lawyer ethics. It was not until 1908 that the ABA proposed such "Canons of Ethics" for wider use

**Thomas D. Morgan**

This address  
was given  
at the  
J. Reuben Clark  
Law School  
Convocation  
Exercises,  
April 24, 1992.



Before that time, and in some states much later, lawyers were licensed based on "I know it when I see it" tests of character. They lost their licenses forever based on standards as vague as "conduct unbecoming a lawyer."

We changed that approach in 1969 for some good reasons. Unstated standards presuppose there is a universal consensus about appropriate behavior. We are in a period of our nation's history where that is not so. Also, application of nonreviewable standards can foster prejudices masquerading as principles. Women, members of racial and religious minorities, and defenders of unpopular causes were often victims of that problem.

Yet the period before rule-oriented ethics had a quality that is lost today. ABA Canon 32 states:

"No client, however powerful, nor any cause, civil or political, however important, is entitled to receive any lawyer's service involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person exercising a public office or private trust, or deception or betrayal of the public. Above all a lawyer will find highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest [person] and as a patriotic and loyal citizen."

My purpose in these remarks is not to call for resistance to the rules of legal ethics. However, if we ignore calls to the traditions of lawyering at its best, we do so at real cost. Ask yourself whether the bar you are entering is more humane and more just than the one that existed before 1970. We certainly had problems then, but think about the viciousness and cost of litigation today. Think about the lack of ability to trust another lawyer's word—the loss of loyalty many lawyers feel even to others in their own firms. Think about lawyer blindness even to criminal and fraudulent conduct of their clients, particularly clients that pay promptly and pay well.

You have all studied the ABA Code and Model Rules. One does not find there, for the most part, calls to public responsibility—or to loyalty that transcends client service. And one does not find central there a call to the highest standards of personal character.

While it was not a time immune from moral blindness,

the pre-code period was a time when individual lawyers took personal pride in their reputations for integrity, not simply in their technical skill. It was a time when the bar was more a community, one that could engage in serious self-evaluation, not merely create ethical standards that look for all the world like a criminal code.

Part of the problem with rule ethics is we tend to think that once we have defined a problem, the solution will come easily. It is important to learn that problems are usually more complex than they seem, and regulatory solutions are likely to miss their target as often as not.

Also, Americans—and especially lawyers—tend to be lured to loopholes as moths to a bright light. For example, we say in our standards that lawyers must tell a court about legal precedent contrary to their client's interest, but I find that many more lawyers can quote the language about when the rule does not apply than when it does.

Ethical rules are often just window dressing we use to pretend we have dealt with a problem. We flatly prohibit "knowingly making a false statement of law or fact," for example, but we make no pretense of enforcing it with respect to negotiating behavior.

Make no mistake, of course, our "experiment" with rules is likely to be permanent. It should be. At their best, the rules governing lawyers go much deeper than what I have suggested. At their best, they describe a network of shared understandings that permit lawyers to deal with others they do not know, without assuming the worst about them.

It is important that lawyers from this graduating class—from this institution with its historic sense and religious commitment—retain a sense of

personal responsibility for, and toughening of, the ethical standards governing our whole profession. Pressures *not* to do so have never been greater. All over the country today, lawyers are under pressure to affirm and facilitate client misconduct.

In the demise of important savings and loan associations, for example, it is often charged that lawyers assisted dishonest managers in exchange for a piece of the action. While charges are a long way from proof, I am concerned that in many of those cases—as in other cases in which

WHOEVER

YOUR HEROES

OR HEROINES

MAY BE,

TRY TO REMIND

YOURSELF REGULARLY

WHAT DREW YOU

TO THEM IN

THE FIRST PLACE.

lawyers are accused of falling short—honest lawyers may have been caught in situations where the rules were not helpful. The ABA Model Rules of Professional Conduct, for example, affirmatively prohibit a lawyer from disclosing a client's intention to commit a major, criminal financial fraud. The bar is only now learning that, in spite of compliance with ABA-approved standards of professional conduct, lawyers may be asked to pay millions of dollars in damages to the victims of their clients' actions.

The professional liability cases further remind us of another truth. To most lawyers, most of the time, there is little likelihood that their behavior will be scrutinized. Occasionally you may have a case that will attract public attention, but most often, you will labor in obscurity. If fear of prosecution is your only compass, you will surely lose your way.

What can we as modern lawyers do to keep our perspective when decisions are tough and only we will know the choices we have made? I believe a big part of today's answer should be one prior generations would have recognized. One way the profession kept its bearings in the days before codes and rules was to focus attention on the lawyers who behaved well—those we might call heroes and heroines of the bar.

I am frustrated by my use of the terms hero and heroine, but I was not able to come up with better ones. The counsel to look for heroes sounds anachronistic today; after all, we live in an age largely without heroic figures. If a public official ever makes a mistake, be it a careless remark or worse, we are reminded of it endlessly. That moment tends to be made the defining moment of our potential hero or heroine's life, and we are encouraged to feel cynical and superior.

It is always easier to see the speck in another's eye than the log in our own. Professional life is a constant struggle with uncertain facts, mixed motives, and ambiguous law. None of us has much to feel superior about. The best we have to guide us are not perfect people, but men and women of character, doing their best to live their own lives with integrity.

We cannot shift the responsibility for our own action to such people, but focusing on men and women we admire can give the sterile pages of an ethical code a human face. Asking yourself what these people would do in a given situation—or asking whether you could satisfactorily explain to such a person what you plan to do—can bring a clarity to the right answer that parsing the case law will not.

Who are the heroes and heroines you can turn to?

Today, lawyers tend to lack the mentors that they once had—men and women who worked closely with beginning lawyers and affected their personalities and understanding for a lifetime.

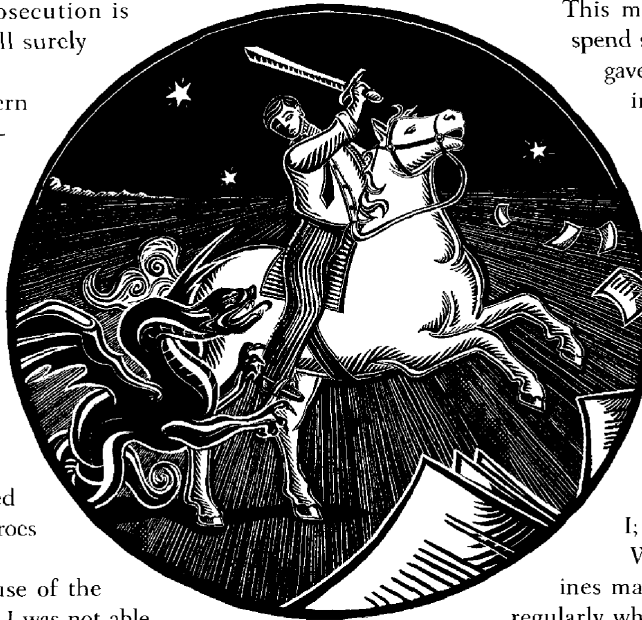
If you are struggling with the question of whom to admire, you might begin by asking whose example made you want to become a lawyer. In my case it was clearly my dad, a man who successfully practiced law in downstate Illinois, yet who took important time away from his practice to give of himself to community service at a time when our city desperately needed honest leadership.

This morning I had the chance to spend some time with the man who gave me my first job in law teaching. It was a critical time of career decision for me, and he was someone whose own character and enthusiasm showed that teaching could be a career with satisfaction and value. You will understand what I mean because he has continued to demonstrate those qualities in all of the subsequent roles he has filled. Many of you know him much better than I; he is Elder Dallin Oaks.

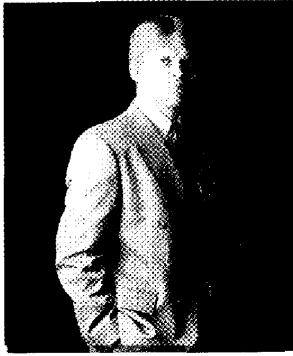
Whoever your heroes or heroines may be, try to remind yourself regularly what drew you to them in the first place. And keep your eyes out for others to admire and emulate. Heroes of your 30s and 40s may be different from those in your 20s; don't freeze your ideals at one moment in your life. If you keep this focus, you just may find that even a profession now approaching a million practitioners can be an enriching community.

Follow the ethical rules—better yet, help improve them. But recognize that it is still true that lawyers are hired as much for the wisdom they are thought to have as for their technical skills—for who they *are*, as much as for what they know.

Like it or not—resist it or not—in less time than you can imagine, you will be heroes and heroines for the lawyers who follow you. Some of you already are today. Your conduct—your life—is something that will affect for good or ill the way law is practiced in future generations. Your influence will exceed your knowing. Resolve to make yours an influence of which you, your family—and this Law School—can be proud.



*Thomas D. Morgan is the Oppenheim professor of antitrust and trade regulation law at George Washington University National Law Center.*



**PRO BONO PUBLICO**  
**J. Gregory Bishop '86**  
**Serves the**  
**Homeless of D.C.**

In a society that often gauges success by the money in a person's checkbook or the size of his car, it is refreshing to find someone like J. Gregory Bishop, a 1986 Law School graduate who would rather have his success measured by those he has helped. His efforts with the Coalition for the Homeless, Inc., a Washington, D.C., nonprofit organization, have lifted myriads who have been tossed into the poverty mire.

After arriving in D.C., Bishop was touched by his frequent encounters with the homeless in the subways. "I would give them change, but it didn't seem to be enough. It was a very helpless feeling," he said. Bishop discussed the problem with other attorneys, and they concluded that they did not know enough about the problem to even start helping.

So Bishop began investigating the various organizations running homeless shelters and was soon impressed with the Coalition for the Homeless. The coalition seemed to work well within the system, which fit into Bishop's

personal style—not just warehousing people, but helping them rise above their surroundings.

Bishop started working with the coalition by involving his elders quorum in Sheetrocking a home. Soon after the coalition asked him to serve on its public relations committee and, later, its legal committee.

Eventually, he was named vice-chair of the board of directors, and in 1990 he was elected chair.

The coalition, formed in 1979 as an advocacy group for D.C.'s growing homeless population, is now the second largest shelter provider in Washington, D.C., with a \$4.5 million annual budget. There are three basic programs run by the coalition. Two emergency shelters service up to 250 people per night—people show up in front of the shelter and each is given a bed and a meal. The program is open to all, first come, first served.

The next step is the transitional program for men. There are four transitional facilities that help people become self-sufficient. This six-month program is not open to everyone; the coalition works carefully to select those who are motivated to change their lives. Participants must be drug and alcohol free and must either have a job or be looking for one. The coalition also provides assistance to those looking for jobs. Some of the money earned by the residents while in the program is put in a trust and returned when they complete the program. This ensures that residents have sufficient funds for their

first month's rent and security deposits. To keep the participants drug and alcohol free, Alcoholics Anonymous and Narcotics Anonymous also play a part in the transitional program.

Because of the area's high rental costs, the coalition also designed the single-room occupancy program to help people who cannot initially afford housing. The rent is partially subsidized until they are able to get back on their feet.

One of Bishop's favorite programs is one they've developed for families. Though this is the fastest growing segment of the region's homeless population, the service-delivery system is typically not set up to deal with families, especially with the trauma that occurs when families are separated. Their program helps solve that problem.

Bishop is particularly happy with how their program has helped the children stay in school, an impossible task when families move around the city from shelter to shelter. Also, the schools are successful in bringing in the children without the stigma of homelessness. The family program has been popular among the volunteers, with people taking the children to the zoo or to other activities.

The day-to-day business of the coalition is handled by the executive director. However, the ultimate responsibility for the coalition rests with the board of directors, which has 25 members of varying backgrounds—from social workers to bankers. As chair, Bishop's responsibilities are similar to that of a chair of any corporation. He meets weekly with the executive director and monthly with the board to assure that the coalition is operating smoothly.

Funding for the coalition comes from several different sources, including the District of Columbia government, the U.S. Department of Housing and Urban Development, and numerous private fundraising activities. Due to the recession, funding has dropped considerably, and recently the coalition was in serious danger of going out of business. It now appears that they have weathered the storm, but they had to make tough decisions, including discharging dedicated employees.

The demands on Bishop's time, especially in dealing with the organization's financial crisis, have been heavy. Bishop averages approximately 30 hours a month working for the



coalition; however one month he worked 150 hours in addition to his law firm work. According to Bishop, sometimes it can feel like working two full-time jobs

Since being in Washington, Bishop has worked with three different law firms, and they have each encouraged his pro bono efforts and have even given financial support. His first firm continues to give substantial support to the coalition (one partner serves as general counsel), and his current firm of Verner, Lipfert, Bernhard, McPherson & Hand does much, not only with the coalition, but also with the Legal Clinic for the Homeless. Bishop feels law firms generally like to help the community. The work often gives the firms good exposure and occasionally brings in legal work.

Despite his heavy schedule, Bishop says his wife, Michelle, and their five children have been very supportive. According to Bishop, the Washington, D.C., lifestyle is fast paced, which, when combined with a busy professional life and a commitment to pro bono work can make things tough on the family, a constant challenge. Bishop tries his best to manage. His family views their support as a chance to give service, too.

In his role as chair, Bishop may meet a variety of individuals in any given week. He may be dealing with influential people such as Democratic Party Chair Ron Brown or Canadian Ambassador to the United States Derek H. Burney and soon after be working

with the people society tends to shun.

Bishop feels his time at J. Reuben Clark helped instill a sense of wanting to give something back. He feels service to the needy and poor can be a great spiritual benefit to those practicing law. "In litigation you spend the whole day in an adversary role trying to get the best result for your client. You are frequently tearing things apart, and somewhere along the way you might lose touch with things that matter most. Service gives you the opportunity to put things in perspective."

Also, Bishop feels that practicing law may not lend itself to tangible achievements, whereas working for the coalition has been tangible—a bed for someone to sleep in, a meal to sustain someone for another day, a life that gets turned around.

The coalition work has been humbling to Bishop. "All it takes is being in the wrong place at the wrong time and you're out on the streets," he says. His commitment remains strong even though his job as chair sometimes becomes tedious and seems removed from the day-to-day exhilaration of serving others directly. "These people are already at the end of their rope. I can't just walk away."

Another reason Bishop gives for getting involved is that a little effort can go a long way. "By volunteering you not only involve yourself, but you also give others a chance to help. People generally want to help; they just don't know how. Becoming involved has a catalytic effect. It allows friends and acquaintances

to learn of ways in which they can also help."

Since he joined it, more than 20 of Bishop's friends and colleagues have also helped the coalition. For example, one lawyer had a sister involved with a foundation; after receiving her helpful introduction, the coalition received an \$18,000 grant. Also, a contractor in Bishop's ward donated hundreds of dollars worth of Sheetrock. "Many people giving a little can make a big difference," says Bishop.

Bishop's term as chair ended in September, but he remains active on the executive committee. Looking back on his tenure as chair, he makes the analogy between his work at the coalition and his role as an early-morning seminary teacher or a missionary. "You're making an impact on people at a point in their lives when it is critical. You give a little, but you are getting so much more back."

—Todd Hallock

#### REFLECTIONS ON THE ABA AND ABORTION RIGHTS by J. Clifton Fleming, Jr.

At its August 1992 annual meeting, the American Bar Association reversed its policy of neutrality in the prochoice v. prolife controversy and formally declared itself as favoring women's free access to abortion at any time before fetal viability. The merits of this dispute have been movingly and exhaustively argued by others and I can add nothing to the substance of this debate. Instead, I suggest that regardless of one's

views concerning which side is right on the prochoice v. prolife issue, the ABA's new position should be considered a mistake.

The ABA's action, which was taken by a conscientious majority with respect to the most excruciatingly difficult issue of our time, places the association in substantial agreement with the weight of public opinion. Had this occurred in the conventional political process, those on the losing side, even those suffering the most painful crises of conscience, could fairly be told to accept the fact that debating value questions, resolving those debates through casting votes, and sometimes suffering defeat in the process are what democracy is all about and that the losers' appropriate remedy is to continue the debate and hope to win the next vote. However, this action did not happen as an incident of choosing candidates for public office or carrying out the business of a public legislative body. Instead, it occurred within a nongovernmental organization that presents itself to the public as an expert group focused on nonpartisan efforts to improve law, the legal system, law practice, and the delivery of legal services. I believe these facts indicate that, whatever one's position on the merits of the prochoice v. prolife debate may be, endorsement by the ABA of fetal viability as the jurisdictional event after which government can regulate abortions should be seen as an improvident step.

The proponents of the ABA action characterized the issue as "a simple one: who decides—the politicians of the 50 states, or the

individual woman and her physician?" In my judgment, this misstates the controlling question. No one in the mainstream of the abortion debate seriously argues that an individual woman should have an unfettered right to abort a fetus regardless of how late in her pregnancy she decides to do so. Instead, the controversy is over when the pregnancy has progressed to a point justifying significant governmental restrictions on the termination decision. The mainstream of prochoice advocates has selected viability as the proper event and is willing to allow extensive government regulation thereafter so long as abortion continues to be available where necessary to protect a woman's life or health. This is the position that the ABA has now adopted. But there are other credible possibilities that could be chosen as the event after which government can act—conception, the fetus' development of a detectable pulse, quickening, the onset of labor, and various other medically identifiable moments. Plausible and sincerely held arguments can be made both for and against each of these events as the proper moment to recognize a governmental role in the abortion decision, and none of them can be proven superior to the others by objective methods. Legal training and possession of a license to practice law cannot be seriously viewed as giving special insight with regard to the difficult question of which of these alternatives is best. The ABA's decision to select time of viability in prefer-

ence to the remaining items on the menu has the same tragicomic tone that would exist if the American Medical Association adopted an official position on whether the farm subsidy program should get more, less, or the same amount of money. In such a case, the AMA would have made a choice on a complex issue that its members may hold strong views on but on which they can claim neither expertise nor authority. This is what the ABA has done in the case of abortion. The ABA's action was certainly valid as a measure of its members' subjective preferences, but thoughtful people will give its position little credence when seeking expert guidance in this painful controversy.

The proponents of the ABA's new position pointed out that selecting the correct approach to abortion regulation is a legal question and argued that surely it is appropriate for a body of lawyers to adopt a policy on an important legal issue. Granted, choosing the time at which to apply abortion restrictions is a legal question in the sense that the chosen moment is expressed in law. However, it is not a legal question with respect to which the ABA can claim expert perception because of its lawyer membership. Selection from among the competing alternatives of the proper time for permitting government abortion restrictions is simply not an issue, like school desegregation, where the right answer is clearly revealed by fundamental principles of constitutional law and only those who are uninformed or have base motives are in opposi-

tion. Instead, even if one characterizes choosing the right moment for permitting government to regulate abortion as a legal question, it is clear that this issue involves a difficult selection among plausible alternatives about which numerous Americans hold strong and conflicting beliefs and about which lawyers can claim no exceptional understanding. It is, in other words, a classic dispute over partisan preferences that should be resolved through the processes of American government, not by asserting a claim of legal expertise.

When participating in governmental processes, the proponents of the prochoice position have every right to fully and freely engage in overtly political action. However, I believe that it was a serious mistake for these proponents to enlist the prestige of the American Bar Association in their struggle because the ABA's overtly subjective, non-expert action in the abortion arena cannot help but damage the association's credibility when it furnishes advice to the public and government on matters where it clearly has expertise and authority. The next time the ABA gives a Supreme Court nominee a less than sterling rating, its abortion action will lend much credibility to the already loud allegations by disappointed supporters that the association's judicial evaluations should be dismissed as driven by partisanship. Attacks of this nature on the ABA's judicial evaluations will not likely be blunted by the fact that its abortion position is largely consistent with public

opinion—the public is able to recognize a partisan position whether it agrees with it or not. And whenever the ABA appropriately adopts legislative recommendations that are based on its members' technical skills in constructing legal arrangements and on their experience regarding what does and does not work in the practical world, holders of threatened economic interests will be able to use the association's abortion policy to argue that the legislative position in question is based on partisanship rather than disinterested expertise.

Sadly, the prochoice advocates did not need to impose these costs on the ABA in order to further their sincerely held objectives. Although the proponents argued that the ABA's action was necessary to prevent the U.S. from becoming checkerboarded with disparate state abortion regulations, their argument fails close scrutiny. The ABA could have come out against lack of uniformity simply by advocating the *principle* of a federal abortion statute. Taking a position on the issue of uniform laws v. chaotic diversity seems comfortably within the ABA's expertise, and the ABA could do this without the additional step of endorsing time of viability as the approach the uniform law should employ.

More important, the ABA's abortion action probably comes too late to meaningfully aid the prochoice movement. In spite of prochoice complaints about the recent *Casey* opinion, that case insures that a woman's abortion decision will be substantially unfettered.



prior to viability; and in the current political climate, it is inconceivable that the Supreme Court could be packed with justices who would move in another direction. Furthermore, the polls indicate that the prochoice position has largely won the battle for the mind of the American voter. That fact plus the imminence of a prochoice president means that federal prochoice legislation and public funding of abortions for poor women are overwhelmingly probable. It is unfortunate that the prochoice proponents have compromised the ABA for so small a gain.

The ABA can either function as a body that provides government and the public with principled expert leadership on matters pertaining to our legal system or it can become one more voice in the cacophony of American special interest groups—it cannot do both. In my judgment, the greater good lies in choosing the principled expert role; we already have an ample and growing supply of political action organizations.

Obviously I am disappointed and embarrassed by my association's decision to declare a cut-and-dried answer to a complex and painful partisan issue that is beyond its expertise and that harms its capacity to accomplish many good things. Nevertheless, I find the ABA's work overwhelmingly admirable, particularly its efforts in behalf of women, minorities, and poor people. So I will remain in the association and try to explain to friends and students that an organization can be good even if it occasionally goes

wrong and that a good organization can be supported even if it loses its head in the heat of the most painful struggle of our time.

#### **STEPHEN MIKITA '82 RECEIVES PRESTIGIOUS AWARD**

Jerry Lewis wound up his 27th consecutive Labor Day Telethon to raise money for the fight against muscular dystrophy by honoring Stephen Mikita, an advocate for the disabled, with a special award.

Mikita, a Utah assistant attorney general and recognized expert on the Americans with Disabilities Act, received the Muscular Dystrophy Association's first national Personal Achievement Award from Lewis. Mikita has Werdnig-Hoffmann disease, one of 40 neuromuscular disorders covered by MDA's programs.

Mikita was chosen to receive the award from among 50 state MDA Personal Achievement Award recipients nationwide. The five finalists for the award, including Mikita, were presented live and in taped segments to the Telethon's more than 80 million viewers.

Beginning his successful law career 10 years ago, Mikita is presently assistant attorney general for the state, representing the Department of Health. Mikita clerked for Senator Orrin Hatch while attending the Law School.

Mikita has conducted extensive training on the provisions of the American with Disabilities Act for businesses, educational institutions, and the State of Utah.



*Stephen Mikita*

Mikita also works closely with Utah business leaders to make services accessible to everyone, operating with the philosophy that individuals and businesses can work together in a positive, nonconfrontational manner.

He has spoken frequently for MDA, educating people about neuromuscular disorders.

Involved in many professional and community groups, Mikita is president of Utah's Mental Health Association and serves as a member of the Utah Department of Health's AIDS Advisory Committee. He is chair of the Lawyers Helping Lawyers Committee of the Utah Bar Association.

In 1989 Mikita was named "Utah Outstanding Young Lawyer of the Year" by the Utah Bar Association.

#### **ALUM COMPLETES BOOK**

James Baker '77 has just completed his book *Women's*

*Rights in Old Testament Times*, published by Signature Books. As the title suggests, the book reviews the narratives of the Old Testament from the woman's point of view against the background of ancient law. The stories of 23 women are reviewed, covering such subjects as marriage, divorce, levirate marriage, metonymic marriage, rights to property, inheritance rights, rights of chief wives versus concubines and slave wives, etc. Women are shown to have been responsible, self-possessed, and assertive. They used the law to their advantage and were not the downtrodden property of men as some authors suggest. It is the first book to show, for instance, that Tamar was using customary law to her advantage when she played the harlot and tricked Judah into performing his legal marital duty to her.

Jim developed his interest in ancient law while a student at the Law School. When classes were held at St. Francis, Jim submitted a list of 50 religious books to

library acquisitions and, to his surprise, all were ordered. Since then, the Law School has accumulated a notable religious law library, due in part to Professor Doug Parker's continued interest.

After graduation, Baker took his wife and five children to Israel. There he enrolled in the Hebrew University Law School to study Jewish law.

Baker currently lives in Salt Lake City with his wife and those of his family still at home. He has a solo practice in ERISA, corporate law, and estate planning.

His book is available from Signature Books or from Baker, 300 IBM Plaza, 420 E. South Temple, Salt Lake City, Utah 84111. Those ordering through the mail should send \$17.95, which includes shipping and handling.

#### **WALDRIP DESIGNATED AS FELLOW**

Stuart T. Waldrip has become a fellow of the American College of Trial Lawyers. Membership, which is a position of honor, is by invitation of the board of regents. The college is a national association of 4,500 fellows in the United States and Canada. Its purpose is to improve the standards of trial practice, the administration of justice, and the ethics of the profession. The induction ceremony took place during the recent Annual Meeting of the American College of Trial Lawyers. More than 1,000 persons were in attendance at this meeting of the fellows in Boston, Massachusetts. There are 27 fellows in Orange County, California, among some 8,500 lawyers.

Waldrip is the owner of the Law Offices of Stuart T. Waldrip, APC, and has been practicing in this area for 24 years. The newly inducted fellow is an alumnus of the University of Utah College of Law and Stanford University. He has been president and a director of the Orange County Bar Association and serves as a member of the J. Reuben Clark Law Society National Advisory Board and chair of the Orange County chapter of the society.

#### **RYAN TIBBITS '84 JOINS CONFERENCES TEAM**

Ryan Tibbits, a shareholder in the Salt Lake City firm of Snow, Christensen & Martineau, has been selected by the ABA to be a member of the Conferences Team for the Young Lawyers Division. In this position, he will oversee two public service conferences. Tibbits was treasurer of the Utah Young Lawyers Section in 1987-88 and has cochaired the Special Projects Committee.

#### **JERRY FENN '83 APPOINTED VICE-CHAIR**

Jerry Fenn, a shareholder in Snow, Christensen & Martineau, is the vice-chair of the National Bar Leadership Committee for the Young Lawyers. This new ABA committee will train young lawyers to be leaders in the legal profession and professional organizations. They sponsored a national bar leadership conference last February.

Fenn served as president of the Utah Young Lawyers Section in 1989 and has

been active in the ABA, serving on several national committees. This year, he is chair of the ABA Affiliated Assistance Program. He also chaired the Utah State Bar's Annual Meeting Committee this year.

#### **BRUCE SNOW RETURNS AS LAW SCHOOL DEVELOPMENT OFFICER**

Bruce M. Snow has returned from a three-year assignment as president of the Korea Scout West Mission to reassume his position as assistant to the dean for development at the J. Reuben Clark Law School.

Snow is replacing Lothaire Bluth, who filled this assignment for the past three years. Bluth, now as major gifts director, supervises several development officers.

Snow first came to the Law School as development officer in 1987, after serving for 11 years as a regional and area director for LDS Foundation.

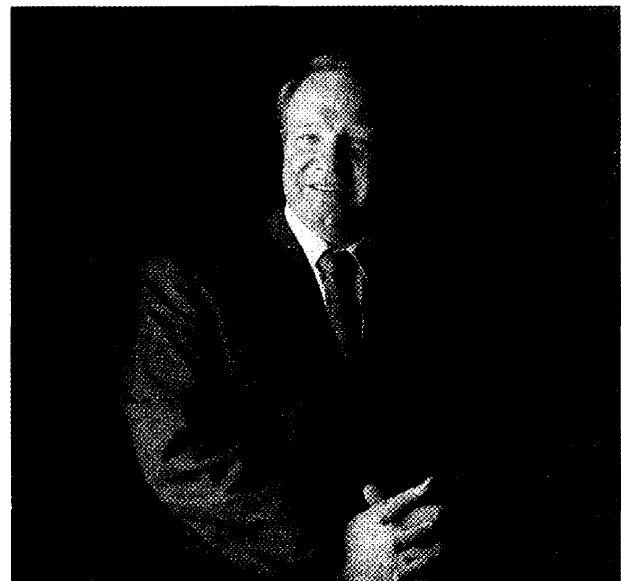
*Bruce M. Snow*

As assistant to the dean for development, Snow is responsible for dealing with major donors and helping promote the J. Reuben Clark Law Society. He is also working on gifts to establish scholarships, chairs, and professorships in the Law School and to augment the law library's collection and facilities.

"I'm excited to be working with the Law School again," said Snow. "It's important for the school to continue to have an impact nationally on the issues that face contemporary society."

The financial support alumni and friends provide the Law School is significant, according to Snow, because these contributions will help the school in fulfilling its mission of providing a solid, values-based legal education.

A 1976 graduate of Western State College of Law in Fullerton, California, Snow clerked for two years for U.S. Federal Judge Marion Callister before coming to work for LDS Foundation. Born in Ogden, Utah, he was raised



in St. Anthony, Idaho. He is a graduate of Brigham Young University.

He and his wife, Cindy, also a BYU graduate, are the parents of four children.



#### IN MEMORIAM

*Margaret R. Nelson '76*  
1952-1992

Diagnosed with cancer more than a year and a half ago, Margaret Rose Nelson fought a valiant and dignified battle for life that ended with her passing on Saturday, September 26, 1992, in Salt Lake City. A 1976 graduate in the charter class of the J. Reuben Clark Law School and one of only six women in that class, Margaret distinguished herself in professional, educational, political, and civic pursuits. Margaret was admitted to the bars of the Utah Federal District Court, United States Court of Appeals for the Tenth Circuit, District of Columbia Bar, and the Bar of the Supreme Court of the United States. Margaret practiced for 10 years in Utah County in a private practice and later as a deputy Utah County attorney. For the last six years, she served as an assistant United States attorney

for the District of Utah. She served on numerous professional committees and organizations, including the Utah Legal Services Board, Utah Statewide Association of Prosecutors, National District Attorney's Association, and Trial Lawyers of America.

Margaret also dedicated her time outside the office to the betterment of the community. Involved in many educational pursuits, she was elected twice as a member of the Utah State Board of Education. She also served with the Education Commission of the States and the Far West Laboratory Board. Taking particular interest in Utah Valley Community College, she served as president of its alumni association, as a member of the institutional council, and as vice-president of the foundation board.

Margaret also served the community as vice-president of the Provo/Orem Chamber of Commerce, chair of the Mountain Land Headstart Board in Utah County, and as a member of the Utah State Land Board, the Utah State Community Impact Board/Disaster Relief Board, and the Provo School District Vocational Advisory Committee.

In addition to her deep and continuous dedication to public service, Margaret loved her association with the Church. She had assumed many responsible positions both in stakes and wards, and at the time of her death, she was in a Relief Society presidency.

Margaret was loved for her quick wit and her use of language. She had an unsurpassed reservoir of energy

and industry and exhibited enormous individuality.

Her work in the law was not only a job but provided her with intellectual stimulation and a forum in which to serve others. Even when gravely ill, Margaret would still report to work, bringing her IV apparatus with her. She derived great joy from her many friends at the bar.

The last months of Margaret's life were characterized with enormous pain and physical deterioration. Still, she remained intellectually charged and positive. A visit with Margaret always meant some good-natured laughter and a positive dose of spiritual insight. Notwithstanding the burden of bad health that afflicted Margaret in those last months and years, she spoke often, and with great conviction, of her blessings of family, friends, and testimony. Even in her extremity, Margaret spoke of the gifts God had given to her.

—D. Miles Holman

#### FACULTY UPDATE

*Jean Wegman Burns*

Professor Jean Burns has been doing research on vertical restraints under the antitrust laws. In her most recent article, "The New Role of Coercion in Antitrust," 60 *Fordham L. Rev.* 379 (1991), Burns explores the role of coercion evidence in vertical restraint analysis before and after the ascendancy of the economic efficiency approach in antitrust. Burns feels that coercion evidence plays a significant but changed role in

analyzing vertical restraints and tie-ins.

Currently Burns is writing another article about using the economic efficiency approach to analyze vertical restraints and tie-ins under the antitrust laws. In this article she examines the demise of vertical restraint law in antitrust and the explosion of vertical restraint cases in areas outside of antitrust, such as state franchise and unfair competition laws and common law theories. She also examines the growing evidence that consumers do not believe some of the basic tenets of the economic efficiency approach. Burns then analyzes how these developments affect the continued viability of the economic efficiency approach to vertical restraints and antitrust jurisprudence in general. In addition to her research, writing, and teaching, Burns has served for the past year on the admissions and faculty appointments committees.

*Ray Jay Davis*

As chair of the task committee on the Model State Water Code, Professor Ray Jay Davis is drafting a proposal for the American Society of Civil Engineers to present to state legislators as the organization lobbies for the water code. Davis will also chair an engineering standards committee that the society will set up to review the code periodically and to lobby for legislation. Davis points out that the Law School has supported this generously and should be commended for their involvement.

Davis recently completed coediting the *Arizona Workers Compensation Handbook*, which is a complete rewrite of his 1980 *Arizona workers compensation* textbook. The new handbook, which has been published by the State Bar of Arizona, is a reference book and was introduced at a meeting of the workers compensation section of the Arizona Bar. The book is all-encompassing, dealing with all facets of workers compensation, including forms, benefits, and procedure. Davis wrote several portions of the book: the preface, an introductory chapter, a chapter on conflict of laws and coordination of benefits, and introductions to each part of the book.

Besides participating in six conferences, of which proceedings have been published, Davis has authored several articles addressing flood law, weather modification law, workers compensation, climate change, water rights transfer, and antipolygamy legislation. Using his expertise on the model water code, he has organized a workshop for a national irrigation conference being held in Park City next July and organized a conference session at the meetings of the Water Resources Division of the American Society of Civil Engineers planned for Seattle in May.

Davis served until recently on the advisory council on workers compensation of the Industrial Commission of Utah and is vice-chair of the advisory committee of the Utah Water Resources Research

Center. He recently completed a term as president of the Provo Rotary Club.

#### Larry C. Farmer

Currently Professor Larry Farmer's pet project, as in recent years, is the celebrated Computer-Assisted Practice Systems (CAPS). Since 1979 Farmer has worked with Stan Neeleman and Marshall Morrise to develop the software that helps lawyers program their computers to support their particular practices. The Legal Services Clinic at Harvard has used CAPS since 1987. Farmer hopes that in the future his CAPS research will make legal services less expensive and of higher quality.

Farmer is also investigating the impact of the use of practice systems in teaching clinics. He hopes to discover whether the educational experience of students using CAPS differs from those who don't. Farmer has also used CAPS to produce several automated jury instructions for Matthew Bender.

Recently Farmer has collaborated with, among others, BYU professor Gerald Williams on an article concerning gender-related distinctions in attorney negotiating style and with Lisa Hawkins on the effect of the legal writing clinic on first-year performance.

#### C. Douglas Floyd

Returning from several years of San Francisco appellate litigation, Professor Douglas Floyd

resumes full-time teaching this year. Floyd first taught at the J. Reuben Clark Law School from 1980 through 1985 and last year began the transition back to full-time teaching by splitting his time between San Francisco and Provo. This year he will teach courses in civil procedure, federal courts, and civil rights.

His current academic focus is a four-volume antitrust treatise. This major project, which Floyd will coauthor with Dean E. Thomas Sullivan of the University of Arizona, will deal with procedure, immunities, remedies, jurisdiction, and other structural issues in the antitrust field. He and Sullivan hope to have the treatise, to be published by Little, Brown & Company, completed by fall 1994.

#### Michael Goldsmith

An in-demand lecturer among attorneys, judges, and legislators, Professor Michael Goldsmith has been traveling across the country speaking on white collar crime issues such as asset forfeiture, money laundering, RICO, and electronic surveillance. Recently he also spoke at the Tenth Circuit Judicial Conference on criminal law and procedure.

His numerous publishing projects include a new book on money laundering, an article on electronic surveillance and the attorney-client privilege in the *University of Southern California Law Review*, a second edition of his casebook on evidence, and an article on RICO in the

forthcoming *Harvard Journal of Legislation*.

Professor Goldsmith serves on the board of editors for two leading publications on RICO and money laundering. He consults regularly for the National Association for the Attorneys General and for law firms throughout the country.

#### Heidi K. Hubbard

Visiting professor Heidi Hubbard has taken a leave of absence from litigation firm Williams & Connolly, Washington, D.C., to spend the academic year teaching BYU law students. For the past five and a half years, she devoted approximately half her litigation work to white collar criminal defense, with an emphasis on securities fraud, and the other half to general civil litigation. "The most exhilarating part of law practice," she says, "is going to court; the most rewarding part is getting a good result for a client." Drawing upon her expertise, Hubbard teaches a large section on torts and a seminar on criminal trial practice at the J. Reuben Clark Law School.

Since earning a JD from Stanford Law School in 1986, Hubbard has retained her love for the classroom, an interest that complements her legal experience. She enjoys returning to BYU, her undergraduate alma mater, to participate in the learning experience. Hubbard observes, "It's nice to have a chance [at the Law School] to think of the big picture, to think of issues not dictated by the needs of a client."

J. Reuben Clark Law Society  
J. Reuben Clark Law School  
Brigham Young University