

Spring 1997

Clark Memorandum: Spring 1997

J. Reuben Clark Law Society

J. Reuben Clark Law School

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Clark Memorandum

J. Reuben Clark
Law School
Brigham Young
University
Spring | 1997

Anonymous No More
The Howard W. Hunter
Law Library

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Anonymous No More

Lovisa Lyman

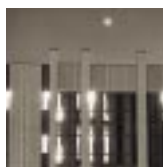


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Unmeasured Factors
of Success
Elder John K. Carmack

David and Chelom Leavitt
Michael Mower

Native American Moot
Court Competition



Anonymous No More



by Lovisa Lyman

Photography by John Snyder



For 20 years the law library at the J. Reuben Clark Law School was

unnamed—or rather, it was generically called the **BYU** Law Library. Finally on May 1,

1995, it was officially christened the Howard W. Hunter Law Library at a ground-

breaking ceremony that doubles the library's floor space.¹ But why so long nameless?

And why the name of Howard W. Hunter? ◦ The answer to both questions

might be something akin to the reason Hunter gave for not taking a partner until the

last two years of his practice: "A partnership is like a marriage; it

has to be right." Naming a building on **BYU** campus (rarely done

because of monetary contributions but rather to honor exem-

plary service to the Church and to society) also should be right.

Nothing could be more fitting than the new name of the library.

◦ Howard W. Hunter's relationship with the Law School

and library did not begin with the assigning of the name, of course.

In 1970 then **BYU** president (a former attorney) Ernest L. Wilkinson suggested to another former attorney, Elder Marion G. Romney of the Council of the Twelve, that the Church might establish a law school. Elder Romney presented the idea to Harold B. Lee, then first counselor in the First Presidency. President Lee referred the suggestion to the **BYU** Board of Trustees, of which Elder Hunter was a member. A former attorney himself, Elder Hunter greeted the proposal enthusiastically. According to his son Richard, "He could anticipate the academic excellence that would become an integral part of the new law school and envision the

school's potential to teach and influence young people as they learned the law in the light of the gospel."² Once the law school was approved, Hunter participated in the selection of the first dean and in early fund-raising efforts. In recognition of his many contributions to the school's growth, the Howard W. Hunter Professorship was established in 1989 to honor its namesake and open the way for improved teaching and research possibilities. The naming of the library is merely a capstone to President Hunter's years of support and to his excellence as scholar, attorney, and church leader.



Learning in the light: The north wall of the Hunter Library with its two-story windows is popular with students in search of a sunny study space.

Legal Training

Not unlike some students who now study in the Howard W. Hunter Law Library, Hunter completed his legal

education under difficult circumstances. He had originally intended to

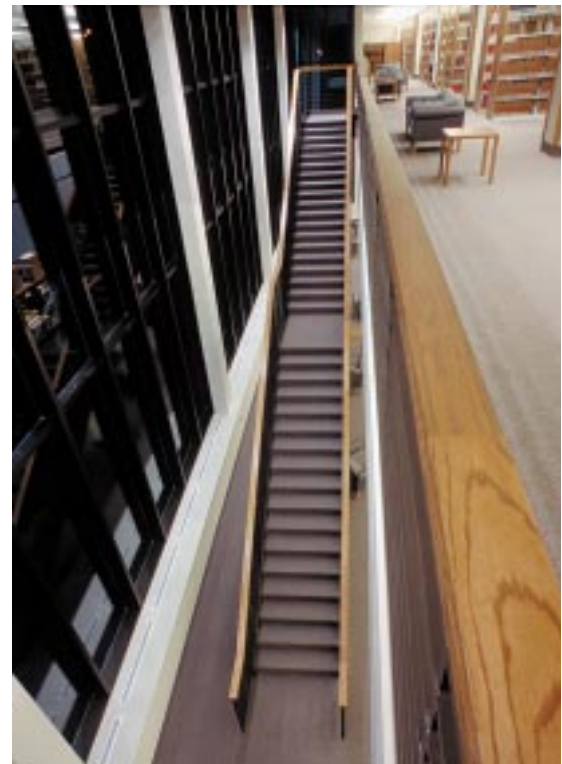
pursue a banking career when his bank closed in 1932. For the next two years, as the depression continued to ravage the economy, he worked at anything he could find, including painting bridges and packaging and peddling laundry soap door to door. In 1934 a friend who worked as a title examiner for Los Angeles County Flood Control District tutored Hunter in his spare time and then recommended him for a job. The Flood Control District provided Hunter with a steady, secure position, but, he wrote: "For a long time I had wanted to get back in school. My work with the Flood Control District was principally legal in nature. I was examining titles, writing legal opinions as to the sufficiency of documents, and preparing actions in eminent domain to condemn properties for flood control purposes. I also assisted the attorneys with the evidence and preparation for trial, and on occasion was present at the trial of the actions. It was finally my decision to go to law school and work for a degree."³ He and his friend at the Flood Control District decided to pursue law careers, but neither could afford to leave the jobs they had. So they opted to attend Southwestern University, the largest of the three law schools in Los Angeles, where evening classes were offered. Because he had not yet completed an undergraduate degree, Hunter began by taking prerequisites and honing his study skills. Eight years had passed since high school graduation, and he felt at a great disadvantage competing with younger students who did not work full-time or support a family. "His weekday schedule consisted of studying on the bus and streetcar on the way to the office; working from eight to five, with more studying at noon while eating a sack lunch brought from home; munching an apple and memorizing as he walked several blocks to the university; attending classes from six to nine; studying on the ride

home; eating dinner with [his wife] Claire after 10; then studying again until midnight or later. On evenings when he was too tired to stay up and study, he would set the alarm clock to wake him up earlier in the morning. He followed this schedule for the next five years."⁴

During his first year at the university, the couple's six-month-old son William was diagnosed with anemia caused by an ulcerated intestinal diverticulum. Surgery was performed, but hours later the baby died. Though the young couple was devastated, solace came with the births of two more sons before Hunter graduated from law school. The first of these, John, was born one night near the end of Hunter's first year of legal study. "The night wore on," he wrote in his journal, "and midnight passed. By this time I had finished my lesson assignment. It was not unusual for me to study far into the night, but not all through the night. After a few short walks and reading several weeks ahead in the textbook, the sky was commencing to turn red in the east and the mocking birds were chattering in the trees outside the window.

"The nurse came in a few minutes after five o'clock, while I was still reading *Blackstone*, to tell me we were parents of a baby boy."

Two years later they were at the hospital again for the birth of son Richard. Hunter recorded: "When John was born, I was reading *Blackstone*, but this time it was *Cases on Wills and Testaments* when Dr. Stratford came in to tell me we had another son."⁵ (Both sons have followed their father into law. John is now a judge, and Richard has a thriving practice.)



The north staircase connects the second and third floors and provides an excellent view of Mount Timpanogos and Squaw Peak.

"With a crescendo that ended in final examinations, law school came to an abrupt end in the first week of June 1939,"⁶ wrote Hunter. He and two other students tied for highest honors in his class. Officials had to recompute the grades in decimals to figure out the exact order. By two-tenths of 1 percent, Hunter missed first place and second place by one-tenth of 1 percent. Thus he placed third in his class and received a bachelor of laws *cum laude*. (Later, when Southwestern adopted the doctor of jurisprudence, Hunter's degree was changed retroactively.) Thus ended his difficult but illustrious pursuit of a law degree, commemorated in 1977 when LDS law students at Southwestern University named their student organization after him. But the studying was far from over.

As World War II geared up in Europe, Hunter tried to concentrate on the bar exam he was scheduled to take just four months after graduation. The teacher of the bar review course told Hunter and his fellows to look hard at the students on their right and left sides because only one in every three class members would pass. The examination, which lasted for three days, was "one of the most grueling experiences of my life," recorded Hunter. "After the third day I was completely exhausted. I had done my best but there was the anxiety of not knowing whether or not that was good enough."⁷

Results were several weeks in coming. He knew that a thin letter would mean that he hadn't passed. A fat letter would include forms to be completed for admission to the bar and courts. In mid-December Claire called him at work. Hunter asked, "Is it a thick or a thin letter?" Claire responded, "A fat one." Hunter wrote: "I felt a surge of blood to my head and I closed my eyes and waited for her to open and read the letter. The hard work and the sacrifices we had made were at a successful conclusion."⁸ In January 1940 he was sworn in and admitted to practice before the California Supreme Court and other California state courts. In February he was admitted to the bar of the u.s. District Court for Southern California and the following April to the bar of the u.s. Circuit Court of Appeals for the Ninth Circuit.

Law Practice

Several legal matters were already awaiting his attention

when he rented office space in the suite of offices of another attorney and established his

solo practice. The offices included a law library where Hunter did much of his research,

sometimes assisted by a librarian or his secretary. Later his practice would keep him

and two secretaries busy for long hours, but he continued to be a solo practitioner with no clerks or computer databases to help him. He did his own painstaking research and writing. Beyond legal writing, he was a prolific diarist, carefully documenting his own and family activities. Early on he began his own library collection of law books and titles related to his other interests, all carefully ordered on the shelves. For materials not included in his own or the office library, he used the court library collections.

For the first five years of his practice, he continued to work for the Flood Control District, spending half a day there and half a day in his office. By the spring of 1945, however, his clients required more of his time, and Hunter resigned from his other job to become a full-time lawyer.

Hunter's practice, which flourished for 19 years, concentrated on estate planning and business, corporate, real estate, and probate law. He served on more than two dozen boards, some of them until the time of his death. His partner, Gordon L. Lund, who joined him for the final two years of his practice, suggested that his kindly nature probably kept him from becoming involved with criminal law or domestic relations. As an ecclesiastical leader, however, he was often drawn into situations where his legal expertise was needed. Frequently these took the form of helping childless couples arrange for adoptions. When clients couldn't pay, he gave them free legal advice, often not even collecting money he had advanced.

Hunter believed that people were good, though he was sometimes disappointed. Once he entered an oral agreement with a client he had known for many years. When

the client subsequently refused to pay what he owed, Hunter was obligated to take him to court, where the judge ruled in Hunter's favor. "Out of this experience I learned a great lesson not to rely on an oral agreement or to trust a fellow man. Regardless of this lesson," quipped Hunter, "I have chosen not to follow it."

In 1948 a colleague asked his permission to recommend his name to the governor of California for a judgeship. Hunter declined because, as he wrote in his journal, "My law practice was treating me well, and I wanted the freedom to work in the Church and carry on my own interests."¹⁰

By 1958 the practice and his Church work filled his time almost to capacity. He used every spare minute for study on one project or another. He chose to ride the streetcar to work and back so he could work during the two hours it took to travel. One of his sons would meet him at his stop to walk home with him, or, when they had their licenses, in a car to drive him home. As his life became more hectic, he considered adding a partner to free him up for more time with his family and for the traveling he enjoyed so much. At this point he received a call from Gordon Lund, a member of the stake over which Hunter presided. Since Lund's partner had recently died, he was looking for a new one, and he thought Hunter might know of someone. Hunter's firm became Hunter and Lund. The partnership was a success, and no clients were lost when the two joined forces or when Hunter left for full-time Church service.

In short, Hunter's was the sort of practice that 50 years later would justifiably win him the accolades of the Ninth u.s. Circuit Court of Appeals in Pasadena. In 1990 that court began to honor members

of its bar who had served for more than 50 years. Hunter was the first to be so designated. Longtime friend and fellow attorney John S. Welch said on that occasion, "It may seem unusual that the program should be launched with recognition of a man whose active practice of law essentially ended in 1959. But I suggest that the choice is a wise one and fitting." He then went on to explain why: "President Hunter ... loves the law. ... He loves it in its grand tradition; he loves it in its broadest concepts, including the civil law and the spiritual, both of which are so much a part of his life. I doubt if there has ever been any attempt in his own mind to compartmentalize the two, or that he has ever seen any need to do so. ...

"Back in 1939 when he finished law school, lawyers did not think nearly so much of the practice of law as a business as we do today. ... If he were still practicing law he would still be doing it in that old-fashioned way. ...

"But more to the point is the contribution which he made to the quality of the profession itself. For over 50 years, in and out of active practice, he has stood as a highly visible example to all of the lawyers and law students who know him or know of him (and they number in the tens of thousands). He epitomizes the practice of law in the classic style: honor,



The oak "Hunter Chair" was designed in consultation with students and faculty. It combines comfort with the mission-style elegance of the Hunter Library furnishings.

Clockwise, beginning in the upper left:

- (1) The conference room facilitates meetings and group presentations without disturbing other library patrons.
- (2) The Hunter Library now has about 20 times the public study space it had before expansion. Nearly half of the public study tables have connections to the campus computer network.
- (3) Computer-assisted legal research training, including Westlaw, Lexis, CD-ROM, and internet research, is conducted in the second-floor legal research training room.
- (4) The rare book room houses the Hunter Library's special collection of old and rare books.





The third-floor popular reading room provides a retreat where students can browse magazines, read newspapers, and visit with classmates.



Four busts by artist Avard Fairbanks that portray Lincoln at different stages in his life are on loan to the Hunter Library from the university's Museum of Art.



The second-floor reception area is a popular gathering place for study groups.

ethical conduct, courtesy, gentility, the art of making the adversarial system work while sticking to the rules, and, though I list it last—as a component of first importance—integrity.”¹²

To this praise Hunter responded: “It’s true that I have an interest in the law—a deep interest. I haven’t actually practiced

as a lawyer for a few years now. . . . But I still think of those days that were precious to me in the courtroom and with clients.

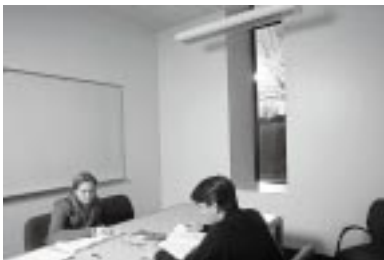
“What a great thing it is to have the privilege of being personal counsel to people who have needed legal help.”¹³

Hunter’s plans for more freedom and leisure came to an abrupt end on October

day at the office, traveling overnight to Salt Lake City, attending the weekly temple meeting of the First Presidency and the Twelve, taking care of business matters accumulating on his desk at the Church Administration Building, then taking an overnight train back to Los Angeles and going directly to his law office for another full day’s work. Sometimes he varied the routine by leaving California on Tuesday evening, and occasionally he took a late-night flight rather than the train one or both ways.”¹⁴

Saturday, July 2, 1960, was a bittersweet occasion. He recorded in his journal: “Today I finished most of my work at the office. Nearly all of the pending matters are completed. I was alone in the office today with the realization that my practice of law was now at an end. I made notes on a number of files and left them on the desk for Gordon [Lund]. I had a sick feeling as I left the office. I have enjoyed the practice of law and it has been my life for the last number of years, but in spite of this I am pleased and happy to respond to the great call which

has come to me in the Church.”¹⁵ Even after the Hunters made their permanent home in Salt Lake City, Hunter continued to visit his old office and maintain relationships he had established over the years. “And while he would not actively practice law in Utah, he was qualified: on January 29, 1963, he was admitted to the Utah State Bar.”¹⁷



Each student is assigned one of the 467 personal study carrels, which includes a full-extension file drawer, locking bookcase, storage shelf, electricity, task lighting, and a 10-megabits-per-second ethernet connection for campus and internet access.

The library’s 27 group-study rooms facilitate collective academic learning and also support clinical and skills-related courses.

9, 1959, when he was called as an apostle. When sustained by the Church membership, he promised, “I am willing to devote my life and all that I have in this service.”¹⁴ After his calling he was allowed time to put his affairs in order in California. For many months he commuted between Los Angeles and Salt Lake City, “boarding a train in Los Angeles on Wednesday after a

Church Service For Hunter, Church and profession overlapped, and

“he never saw any need to draw a bright line between those two fields of service.”¹⁸ When

he began law school, his bishop, sensitive to the burdens he was carrying, did not

call him to any time-consuming church assignments until after he completed his degree. But once he graduated, the hiatus was over, and in August 1940 he was called to be a bishop. Other demanding church

assignments followed, including that of stake president, before he was called as an apostle and, subsequently, for the last months of his life, as Church president. Long before these assignments came, how-

ever, he “had established a hierarchy of values upon which personal, professional, and spiritual decisions were based. Nothing was more important to this man of great faith nor ranked higher on his list of priorities than wholehearted service to God.”¹⁹

The many kinds of service he rendered to the Church over the years are well documented. Not surprisingly, his Church assignments often called on skills he had gained as a law graduate and an attorney, for, as he observed, “the process by which conclusions are drawn is similar in both law and Church administration.”²⁰ Among these were negotiating for land to build Church buildings; raising funds for construction (including those to build the Los Angeles Temple); implementing budget measures to free Church units from debt; evaluating requests for temple cancellations involving legal issues; organizing stakes all over the world, and serving on the board of the New World Archaeological Foundation, as president and chairman of the board of the Polynesian Cultural Center in Hawaii, and as president of the Church’s Genealogical Society. In all these assignments his finely tuned legal mind functioned in the ecclesiastical setting where wisdom, logic, and clear thinking—yoked with a discerning spirit—were required.

None of his challenges as an attorney were more difficult than those surrounding the establishment of the Jerusalem Center for Near Eastern Studies—Brigham Young University. In those negotiations his legal training, understanding of other cultures gained in his wide travels, and spiritual sensitivity were all called into play. From its inception in 1979, Hunter played a major role in acquiring property and planning and constructing the center. “Yet when the final lease agreement papers were signed in 1984, rapidly escalating local opposition almost derailed the project. Elder Hunter’s crucial negotiations, along with a letter supporting the center from the United States Congress, helped resolve concerns. In May 1989 Elder Hunter, then in a wheelchair following back surgery, offered the Jerusalem Center’s dedicatory prayer.”²¹

In negotiating with foreign governments and in giving advice and counsel to

Church membership, he knew how to logically frame and present an argument. “His conference addresses and other talks frequently [used] syllogistic logic; the inescapable conclusions invariably [consisting] of important gospel principles.”²² One such speech delivered to BYU law students exemplifies this tradition. He addressed the issue of whether lawyers can be successful and live righteously simultaneously. “He vigorously assured [the students] that it was not only possible but easy. The key he gave was integrity. And then, true to form, for points and authorities he cited the book of Job, where Job, described as a perfect and upright man, said to his critics, after a series of undeserved tests of character, the cause of which he could not fathom, ‘My lips shall not speak wickedness, nor my tongue utter deceit. . . . My righteousness I hold fast, and will not let it go: my heart shall not reproach me so long as I live.’”²³

In his presentations to the Council of the Twelve and the First Presidency, he often used a legal approach. At the groundbreaking for the Howard W. Hunter Law Library, President Thomas S. Monson joked that Elder Hunter sometimes said, “May I approach the table of the First Presidency?” Of these approaches to the high Church bench, President Gordon B. Hinckley observed: “Brother Hunter was kind and gentle. But he also could be strong and persuasive in his statements. . . . He knew how to present a matter. He laid out the various premises in orderly fashion. He moved from these to his conclusion. When he spoke we all listened. His suggestions most often prevailed. But when they were not accepted, he had the flexibility to withdraw his advocacy, to accept the decision of the President of the Church, his prophet, and to thereafter go throughout the Church furthering with conviction the conclusion that was reached and the program determined upon.”²⁴ Once, when Elder Hunter had persuasively defended an issue to the Brethren, Elder Harold B. Lee closed the meeting by commenting, “If I were ever in difficulty and wanted a brilliant defense attorney, Brother Hunter, you would be my choice.”²⁵ Truly the promise of his patriarchal blessing was fulfilled in both

his professional and Church service: “[T]hou shalt be known for thy wisdom and thy righteous judgments.”²⁶

The goal of the Howard W. Hunter Law Library is to support the very things the Church’s fourteenth president epitomized as a scholar, attorney, and Church leader. The wedding of the law library with the name of Howard W. Hunter is fitting; it is right.

Notes

1. See Spring 1995 *Clark Memorandum* for a detailed description of the new structure.
2. *The Howard W. Hunter Professorship in the J. Reuben Clark Law School, Brigham Young University* (unpublished; available from the J. Reuben Clark Law School, Brigham Young University).
3. *The Howard W. Hunter Professorship*.
4. Eleanor Knowles, *Howard W. Hunter* (Salt Lake City: Deseret Book, 1994), 87.
5. Knowles, 90.
6. Knowles, 92.
7. Knowles, 93.
8. Knowles, 93.
9. Knowles, 119.
10. Knowles, 121.
11. John S. Welch, “Howard W. Hunter Talk for November 26, at the Ninth Circuit of Appeals” (unpublished though extensively cited in “President Hunter Honored for Fifty Years of Legal Service,” *Ensign*, March 1991, 75).
12. Welch.
13. “President Hunter Honored for Fifty Years of Legal Service,” *Ensign*, March 1991, 75.
14. “President Howard W. Hunter: The Lord’s ‘Good and Faithful Servant,’” *Ensign*, April 1995, 12.
15. Knowles, 151.
16. Knowles, 153.
17. Knowles, 154.
18. Welch.
19. *The Howard W. Hunter Professorship*.
20. *The Howard W. Hunter Professorship*.
21. “President Howard W. Hunter: The Lord’s ‘Good and Faithful Servant,’” 15.
22. *The Howard W. Hunter Professorship*.
23. Welch.
24. Gordon B. Hinckley, “A Prophet Polished and Refined,” *Ensign*, April 1995, 34.
25. Thomas S. Monson, “President Howard W. Hunter: A Man for All Seasons,” *Ensign*, April 1995, 31.
26. Knowles, 227.

Fiddler on the U.N. Roof



Richard Wilkins Aids a Sea Change at Habitat II

by Charles D. Cranney, Associate Editor

TEVYE

A fiddler on the roof. Sounds crazy, no? But in our little village . . .
you might say every one of us is a fiddler on the roof,
trying to scratch out a pleasant, simple tune without breaking his neck.'

In April 1996 Professor Richard Wilkins, sporting a full, bushy beard, had just begun playing Tevye in *Fiddler on the Roof* at the local Hale Theater. Of course his wife, Melany, was playing Golde. This was a special theater season for both of them, marking the 25th anniversary of when they played these roles as seniors in high school. The song “Do You Love Me?” had never had more meaning to them than at this time.

TEVYE
Then you love me.

GOLDE
I suppose I do.

TEVYE
And I suppose I love you, too.

BOTH
It doesn't mean a thing, but even so,
after 25 years, it's nice to know.

TEVYE
On the other hand . . .

"Boy, I didn't want to go," said Wilkins. "I thought it was useless. It was like slogging through molasses. I did not want to miss the last two weeks of *Fiddler*, and I *did not* want to miss closing night. I'd planned this for so long. I tried every-

to fly to Istanbul and to let his understudy finish up as Tevye.

What occurred after that was what Wilkins has described as "the legal equivalent to the parting of the Red Sea."

"Professionally, it was the most interesting thing I had done. On a spiritual level it was almost the most profound thing I've witnessed. I felt the hand of the Lord moving people from all over the world in ways that were as real as if he had been there in a pillar of smoke and fire."

So, registering as a representative of BYU's David M. Kennedy International Center and the Law School in preparation for the conference, Professor Wilkins and student Bradley Roylance prepared a paper to present at an NGO (nongovernment organization) seminar. The paper, entitled "The Impact of U.N. Conference Declarations on International and Domestic Law," warned:

What occurred after that was
what Wilkins has described
as "the legal equivalent to
the parting of the Red Sea."

U.N. conference documents, although not technically binding upon participating nations, nevertheless are an important influence in shaping and solidifying the normative concepts of international law. The conference documents, moreover, may have significant impact upon the domestic policy of signatory nations even without formal enforcement mechanisms. Great care, therefore, is warranted in

crafting the precise language incorporated into a formal conference declaration.²

thing in the world to back out. But I just had this feeling that said, 'Go, go, go.'"

For eight months Wilkins had planned a grand party after closing night—June 10, 1996—and had invited longtime friends to commemorate and celebrate. He also planned to have 25 red roses delivered to his wife.

Then he received a call.

Susan Roylance, president of United Families International, asked Wilkins if he could attend Habitat II in Istanbul. This summary U.N. conference, with 25,000 participants, would finalize a seminal legal document, setting an international framework and vision for many years to come. Roylance was concerned because few at the conference seemed to represent traditional family values. And the other side had a well-oiled lobbying machine, mainly from the U.S., that had been extremely influential at the five forerunner conferences to Habitat II. One such was the Fourth World Conference on Women in Beijing, where language in support of same-sex marriages and abortion on demand was easily injected into the Habitat draft.

Wilkins, weary from losing family-value battles on the local front, wasn't inclined to accept Roylance's offer. Besides, this theater season was a special time with his wife and family. His daughter, Claire, acted as the errant Chava in *Fiddler*. Brinton was the rabbi's son, and Rex played a young child. The Wilkins' oldest daughter, Brooke, was the house manager.

HODEL
How can I hope to make you
understand why I do . . . what I do?
Why I must travel to a distant land
Far from the home I love.

With continual encouragement from Roylance, Wilkins decided to follow his feeling, and he made hasty arrangements

Wilkins also drafted several proposed amendments to the Habitat document.

The NGO forum was composed of booths and workshops put on by thousands of nongovernmental entities—"an often raucous marketplace of competing views"—wishing to influence the outcome of the U.N. conference.

"I had merely intended to deliver that paper, do what I could to further the work of United Families International, and watch further social deterioration—at which point I would come back and write

a scholarly paper criticizing the continuing trend,” said Wilkins.

Checking into the Ulubat Hotel (“hardly the epitome of luxury accommodations”), Wilkins looked to see where and when he would be presenting his paper. To his delight and surprise, he was given the largest room with a full cadre of translators on the NGO conference’s second day.

There were hundreds of these types of papers given at Habitat II, and the chance of having a significant international audience with translation services was small.

“There were all kinds of rooms in which you could give your presentation,” said Wilkins, “some of them about the size of closets. There were very few big rooms that would seat several hundred people with full panels of interpreters. Since there were hundreds and hundreds of presentations given during the three weeks, my placement was very unusual. After inquiry, I learned the scheduler thought I was from the *John F. Kennedy School* at Harvard—not the *David M. Kennedy Center* at BYU.”

The room was packed for his presentation and included such distinguished guests as the chief justice from India, a member of the House of Lords, prime ministers from African nations, and many Islamic leaders. Some requested copies of his paper, which had started a rumble at the conference, and many formal and informal discussions ensued.

———— ≈ ————

TEVYE

... and tear out my beard.

———— ≈ ————

Even Wilkins’ beard seemed to help.

Preparing for the conference, Wilkins was in a bit of a dilemma with his bushy *Fiddler* beard. Brigham Young University’s dress code currently mandates that no beards are to be worn by faculty, staff, or students. Wilkins’ face had become tanned in the spring sun, and shaving off his Tevye beard would “make me look like a raccoon.” So he decided to neatly trim it instead.

“I didn’t look like a normal person from BYU. I did look like someone who might have been from Harvard University.” Because he was in an Islamic country and was talking to many Islamic leaders, Wilkins was convinced in a very real way that the fact he had a beard gave him “a lot more credibility with people who otherwise wouldn’t have listened to this white-shirted, clean-shaven American.”

While Wilkins’ discussions were developing his affinity with like-minded associates, others in support of the traditional family were having similar experiences. For example, the talented Steven and Claudia Goodman family³ (with nine of their 12 children) gave many performances of a family-values concert written for them by LDS composer Kenneth Cope. (One was at a large university theater, one at the main public park in Istanbul, and another at the opening ceremonies of a high-level conference plenary session.) The *Turkish Daily News* front-page headline announced, “Goodman Family Outdoes U.N. Habitat Conference.” One song, “Remember,”⁴ truly moved the audiences:

*Who will raise their voice for the family?
Who’ll defend the rights of our liberty?
Come preserve your own
In the strength of God and home.
All who will rejoice in this privilege
Let them now maintain freedom’s heritage.
Come with fervent zeal;
Join us on the battlefield!*

*Fathers, join together in your brotherhood.
Mothers, stand united in your sisterhood.
Rally ’round the cause.
Come before the battle’s lost.*

*Now the nations stray forgetful,
Heedless to the past.
If we fail to plant the standard,
How can the family last?
Who’ll receive this charge?
Come and show a valiant heart!*

*Remember our homes—the safeguard of peace.
Remember the children who look to you
to keep tomorrow free.
Remember God, remember His love.
He calls to us “Remember.”*

*He cries to us,
He pleads with us,
“Remember,
Remember,
Remember.”*

The Goodman family was important, according to Roylance, because “people need to do more than just hear about families. They need to see one—and it helps if it is a large, functioning family like the Goodmans.”

Also, United Families manned a booth 10 hours a day to distribute pro-family materials. Others gave workshops. Wilkins and United Families colleagues lobbied for changes in the Habitat draft. Even so, “things still did not look too bright by the end of the first week,” said Wilkins.

But things were starting to change. On June 6, Johnson N. Mwaura, an elders quorum president from Nairobi, stopped by the United Families booth when it was unmanned. A member of a selection committee that would choose a mere 10 NGO voices to address the actual delegates drafting the Habitat agenda, Mwaura later returned and urged the group to nominate someone to speak in favor of the family. The person at the booth nominated Wilkins, and Mwaura rushed to submit his name moments before the deadline.

“No one in our group even knew about the opportunity before Brother Mwaura appeared,” said Wilkins. “Non-governmental representatives had never addressed an official U.N. body before.” But on hearing of his nomination, Wilkins said, “I *knew* that I would be selected to speak.” He also sensed that the next few days would be most difficult.

The selection process was supposed to consist of a brief “tryout” presentation. Arriving at 10 a.m. on the designated morning, Wilkins had prepared a two-minute presentation about the impact of U.N. declarations on the disintegration of the family. The panel of judges had barely begun their work when a representative of the Women’s Caucus, a feminist organization headed by Bella Abzug, appeared, first declaring that the selection process was invalid. Then the representative demanded that eight of the 10 speakers should be from the Women’s Caucus.

"Thereupon ensued one of the most bitter (and irrational) rhetorical battles I have ever witnessed," said Wilkins.

The Women's Caucus continued the battle for three hours, saying such things as "No man has the right to evaluate what a woman has to say" and "Rules should never get in the way of justice."

"When other NGOs protested that the claimed right to eight speakers would preclude presentation of other viewpoints, the Women's Caucus representative retorted that the objection was irrelevant because the caucus' outlook was more important than other possible opinions."

After a long three hours, Wilkins had had enough. Finally grabbing the attention of the raucous group, he said:

I have been a law professor for 12 years, and never have I heard arguments that have such little appeal to either the rule of law or a sense of justice. There are limited speaking slots available, and the procedures to select a broad range of speakers have been in place and approved for some time. Now the Women's Caucus appears and claims that, because of its size and power, it is entitled to disregard those rules. This is quite like a litigant coming into a courtroom and declaring that, because of her wealth and prestige, she is entitled to her own brand of justice. Law and justice should treat everyone equally and fairly. It is time to get on with the established selection process.

After a bit more shouting, the irate Women's Caucus representative left, and, finally, the tryouts continued late into the evening.

Arriving at his hotel room at midnight, Wilkins received a message that he was one of 10 chosen and that his presentation should be 10 minutes long. At an organizational meeting the next day, he arrived to find the Women's Caucus war still raging.

The 10 speakers were informed that because there was some question about the selection process being fair, other speakers might be added. After disclosing their topics (duly noted by the Women's Caucus rep), Wilkins and the other speakers went to various computers to work on their remarks. A group of women gathered uncomfortably close to Wilkins, making derisive remarks such as "Can you believe that someone is actually speaking about families, the most oppressive unit of society and the root of every war since

agency for a kidney stone), the only text he had before him was "The Family: A Proclamation to the World," an LDS Church declaration by the First Presidency and Council of the Twelve Apostles (see page 17). "My constant prayer," said Wilkins, "was that the message of that proclamation would touch some hearts."

The next morning, at the session where Wilkins was to speak, the committee chair announced that a "few" additional presenters had been added to the roster. ("Eight representatives from the Women's Caucus, to be

"We've ignored the dramatic impact that these documents can and are having. I think it's clear that the Beijing platform has dramatically affected implementation of U.S. federal regulations in areas like abortion access."

the beginning of time?" and "Can you believe that someone is actually opposing homosexual marriages? We have reached the point in our civilization where there should be no discrimination." Two hours later, the representative next to Wilkins was summarily dismissed and informed that a representative from the Women's Caucus would take her place.

That evening, as Wilkins continued work on his address, "in the midst of extremely adverse circumstances" (which included his roommate's medical emer-

exact," said Wilkins.) The chair continued to announce that only six minutes per speaker would be allowed and that it was likely they wouldn't be able to hear from everybody. Wilkins was scheduled as the second to the last speaker, right after the eight additional presentations. "I would not be cut but rather squeezed out," said Wilkins.

Predictably, the eight speakers took much longer than six minutes, repeatedly discussing, according to Wilkins, how "the world's housing problems would disappear if women made most of the important

The Family

A PROCLAMATION TO THE WORLD

The First Presidency
and Council of
the Twelve Apostles
of The Church of Jesus Christ
of Latter-day Saints

WE, THE FIRST PRESIDENCY and the Council of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints, solemnly proclaim that marriage between a man and a woman is ordained of God and that the family is central to the Creator's plan for the eternal destiny of His children.

ALL HUMAN BEINGS—male and female—are created in the image of God. Each is a beloved spirit son or daughter of heavenly parents, and, as such, each has a divine nature and destiny. Gender is an essential characteristic of individual premortal, mortal, and eternal identity and purpose.

IN THE PREMORTAL REALM, spirit sons and daughters knew and worshiped God as their Eternal Father and accepted His plan by which His children could obtain a physical body and gain earthly experience to progress toward perfection and ultimately realize

his or her divine destiny as an heir of eternal life. The divine plan of happiness enables family relationships to be perpetuated beyond the grave. Sacred ordinances and covenants available in holy temples make it possible for individuals to return to the presence of God and for families to be united eternally.

THE FIRST COMMANDMENT that God gave to Adam and Eve pertained to their potential for parenthood as husband and wife. We declare that God's commandment for His children to multiply and replenish the earth remains in force. We further declare that God has commanded that the sacred powers of procreation are to be employed only between man and woman, lawfully wedded as husband and wife.

WE DECLARE the means by which mortal life is created to be divinely appointed. We affirm the sanctity of life and of its importance in God's eternal plan.

HUSBAND AND WIFE have a solemn responsibility to love and care for each other and for their children. "Children are an heritage of the Lord" (Psalms 127:3). Parents have a sacred duty to rear their children in love and righteousness, to provide for their physical and spiritual needs, to teach them to love and serve one another, to observe the commandments of God and to be law-abiding citizens wherever they live. Husbands and wives—mothers and fathers—will be held accountable before God for the discharge of these obligations.

THE FAMILY is ordained of God. Marriage between man and woman is essential to His eternal plan. Children are entitled to birth within the bonds of matrimony, and to be reared by a father and a mother who honor marital vows with complete fidelity. Happiness in family life is most likely to be achieved when founded upon the teachings of the Lord Jesus Christ. Successful marriages and families are established and maintained on principles of faith, prayer, repentance, forgiveness, respect, love, compassion, work, and wholesome recreational activities. By divine design, fathers are to preside over their families in love and righteousness and are responsible to provide the necessities of life and protection for their families. Mothers are primarily responsible for the nurture of their children. In these sacred responsibilities, fathers and mothers are obligated to help one another as equal partners. Disability, death, or other circumstances may necessitate individual adaptation. Extended families should lend support when needed.

WE WARN that individuals who violate covenants of chastity, who abuse spouse or offspring, or who fail to fulfill family responsibilities will one day stand accountable before God. Further, we warn that the disintegration of the family will bring upon individuals, communities, and nations the calamities foretold by ancient and modern prophets.

WE CALL UPON responsible citizens and officers of government everywhere to promote those measures designed to maintain and strengthen the family as the fundamental unit of society.

This proclamation was read by President Gordon B. Hinckley as part of his message at the General Relief Society Meeting held September 23, 1995, in Salt Lake City, Utah. It was published in the Ensign, November 1994, page 102.

decisions about resource allocation, if alternative forms of sexual partnerships were recognized, and if women had ready access to pregnancy termination and government-sponsored day care."

Then the floor was given to Bella Abzug, the founder of the Women's Caucus, who spent 10 minutes extolling the virtues of the Women's Caucus.

"I sat back in my chair, astounded at the breadth of the Women's Caucus' total domination," said Wilkins.

———— ≈ ————

TEVYE

If you spit in the air, it lands in your face.

———— ≈ ————

Yet the domination had become so overt (including vile language several times) that an Algerian delegate formally protested: "Mr. Chairman, we were to hear a variety of views from NGOs this morning, but this has been turned into a seminar on radical lesbian feminism. I want to know if other views are being foreclosed." With the motion being quickly seconded by the Holy See (from the Vatican), the chairman opened the floor, resulting in a flood of objections and charges of corruption.

Trying to assure the delegates that he wasn't corrupt, the chairman allowed Wilkins to deliver "a severely adumbrated version" of his speech for about four minutes. Walking to the podium, Wilkins was verbally hissed by some.

The speech (see page 20)⁶ was given the same day—June 10, 1996—that was closing night for *Fiddler on the Roof* back home. The plea for tradition came through clearly.

———— ≈ ————

TEVYE

It isn't easy. You may ask, why do we stay up here [on the roof] if it's so dangerous? We stay because [this] is our home. And how do we keep our balance? That I can tell you in one word—tradition!

———— ≈ ————

After Wilkins' talk, several delegates from developing nations expressed their thanks, many surprised that an American law professor would defend such a traditional position. Over the next three days, an overwhelming sea change occurred. A group from Islamic nations (many of whom had talked to Wilkins earlier) drafted a document demanding support for traditional values, using such statements as "the family is the nucleus of . . . society" and "the family starts with a man and a woman bonded according to social and religious norms." Many of the other developing countries, "the G-77," as they are known, followed suit and demanded radical changes to the Habitat draft.

"What had looked, from the beginning, like another total victory for the far left feminist agenda was—instead—almost a total defeat," said Wilkins.

———— ≈ ————

FRUMA-SARAH

Have you no consideration for a woman's feelings?

CHORUS

Woman's feelings?

———— ≈ ————

Frustrated, one prominent Women's Caucus leader suggested to Wilkins that he was a "man" and could "never understand." She even went so far as to say that people like Wilkins "hardly deserved to live."

But the Habitat draft did change.

———— ≈ ————

MOTEL

Wonder of wonders, miracle of miracles . . .

———— ≈ ————

"If anyone would have told me, a mere month before, that an important international conference would reaffirm the centrality of the family, reject homosexual unions, and retreat significantly from former worldwide commitments to abortion, I would have called that person either an

inexperienced optimist or a fool," said Wilkins. In all, more than 20 explicit references to abortion were deleted. But perhaps the greatest coup was the final draft's definition of marriage, recognizing that marriage involves spouses who are husband and wife.

"I was surprised at how much impact a few dissenting voices had," said Wilkins. "Bella Abzug insisted that there was this massive, well-organized, well-funded organization behind me. All I had was a plane ticket that the Law School had purchased, a small travel advance, and my MasterCard."

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MENDEL

Is there a proper blessing for the [U.N.]?

———— ≈ ————

So what is Wilkins' view of the U.N. now? "Voices supporting traditional values were eventually heard and—once heard—had significant impact on the final version of the Habitat agenda," said Wilkins. But, though "ideological tyranny does not always prevail," the tyrants are still there. "The current operations of the U.N., dominated as they are by a decidedly liberal and incredibly powerful Women's Caucus that is (at least apparently) directed by a single person, present the same danger of tyranny."

When asked why those in the United States heard little about the conference, Wilkins summarized it in two words: presidential election. Wilkins asserts that the president downplayed Habitat II because much of the agenda the U.S. delegates were pushing there was in direct opposition to the president's domestic position, something the electorate might not have appreciated.

"The U.N. affords political leaders the opportunity to say one thing and do another," says Wilkins. And he documents in his academic writings some ways that the president has used U.N. declarations and agendas to promote a non-legislatively approved ideology.

"People everywhere need to be aware of the role the U.N. is having in the United

States and the world. We've ignored the dramatic impact that these documents can and are having. I think it's clear that the Beijing platform has dramatically affected implementation of U.S. federal regulations in areas like abortion access."

The new international flavor of Wilkins' academic pursuits has given him renewed hope about slowing the erosion

———— ≈ ————

TEVYE

Because of our traditions everyone knows who he is and what God expects him to do.

———— ≈ ————

2. The information for this article came from (1) an interview with Professor Wilkins; (2) "Bias, Error, and Duplicity: The United Nations and Domestic Law," by Richard Wilkins; (3) "Background Report and Outcome on the U.N. Conference on Human Settlements (Habitat II)," by Bradley N. Roylance and Jennifer A. Hogge; (4) "The Impact of U.N. Conference Declarations on International and Domestic Law," by Richard Wilkins; and

After Wilkins' talk, several delegates from developing nations expressed their thanks, many surprised that an American law professor would defend such a traditional position.

Over the next three days, an overwhelming sea change occurred.

of values internationally. "Frankly, we may have lost the battle in the United States," says Wilkins, "but that battle is not at all lost out in the world at large. If we just slow down the erosion, it will provide a window of opportunity for the gospel to be preached." It is the gospel, Wilkins believes, "that is the only thing that will ultimately change all of this anyway."

Continuing his academic quest, Wilkins plans on attending the first of the U.N.'s Habitat-implementation conferences in Nairobi later this year.

Wilkins believes that it is hard to judge how valuable his role was at Habitat II. There were many who contributed to its success. He does feel grateful, however, for being able to "scratch out a pleasant, simple tune" as a fiddler on the U.N. roof.

Notes

1. All quotes from the play can be found in "Fiddler on the Roof," in *Great Musicals of the American Theatre*, ed. Stanley Richards, vol. 1 (Radnor, Pennsylvania: Chilton Book Company, 1973).

(5) Executive Summary: The Transformation of the Habitat II Agenda," by Richard Wilkins.

3. Not long after they returned from Istanbul, three of the Goodman children were killed in a tragic automobile accident.

4. You can hear this song on the worldwide web at <http://advance.byu.edu/law/istanbul.html>.

5. As reported by Susan Whitney, "Utah Clan Headed to Turkey to Show Off Traditional Family," *Deseret News*, 6 June 1996, A-20.

6. An audio recording of Professor Wilkins' address to the U.N. delegates can be heard at <http://advance.byu.edu/law/istanbul.html>.

REMARKS OF
Richard G. Wilkins

Mr. Chairman, honorable delegates, as a professor of law at Brigham Young University and representative of the Caucus for Stable Communities, it is an honor to address international law and the family.

International law deals with the vital issues that arise as women, men, and children live together in national and international communities. The traditional family is the necessary foundation for these larger communities because it is the sanctuary where women and men learn cooperation, sacrifice, love, and mutual support; it is the training ground where children learn the public virtues of responsibility, work, fair play, and social interdependence.

International law and the family, therefore, are inextricably linked. Disregarding this link places both the law and families in peril. Dialogue between family-based nongovernmental organizations and governmental organs, however, can reduce this risk. That cooperation, furthermore, is essential as the regulatory role of U.N. conferences expands.

For example, the Habitat agenda could reshape the contours of international law. Such conference documents can be seen as restatements of binding customary international law. Conference documents can also

significantly alter local law, both through voluntary compliance and by directing the development of domestic law. These documents, finally, address topics—such as housing—that previously were left to local decision makers.

This expansion in the role of conference documents raises serious questions related not only to their substantive content but to the democratic process by which the documents are crafted. As a lawyer and a family advocate, these issues are troubling.

There is substantial distance between those drafting and implementing a conference document and those enjoying the benefits or bearing the burdens of that drafting and implementation. In a local arena, affected families have relatively easy access to the decision makers who can provide redress. Not so on the international front, where many are readily confused by complex international procedure.

Unless this gap between international government and the family is closed, international government is in danger of losing touch with—and perhaps doing substantial harm to—its citizens.

Nongovernmental organizations (NGOs) may help fill this gap. The many views put forward by NGOs and their associated caucuses reduce the risk of regulatory error—to the substantial benefit of both international law and citizens living under that law. For this process to work, however, all voices must be heard. There is, moreover, one important voice that—at least in my professional legal opinion—has not been given adequate attention in the international lawmaking process: the voice of the traditional family.

There is a fundamental connection between the effectiveness of the international—indeed, any—legal system and the reinforcement of strong, stable families. This conference has spent substantial time debating the



Video Capture

U.N. HABITAT FOR HUMANITY
JUNE 10, 1996
ISTANBUL, TURKEY

infrastructure essential for sustainable communities. Similar close attention must be paid to what I would call “*intrastructure*.” This *intrastructure* is built from the fundamental values fostered by strong families.

Family-centered advocacy groups can work positively with government to facilitate sustainable communities. One of the more controversial issues in the debate over the Habitat agenda is the question of teenage reproductive health education and services. Unplanned teenage pregnancies obviously burden community sustainability. Although some pragmatically turn to contraception and abortion, there are family-centered government initiatives that not only address this serious problem but recognize the sanctity of life.

As one example, family advocacy groups in the United States persuaded Congress to authorize a family-based sexual abstinence approach to teenage pregnancy prevention. The enabling legislation specifically recognized that

The family is the basic social unit in which the values and attitudes of adolescents concerning sexuality and pregnancy are formed.

A program set up by Northwest Family Services included facilitating discussions between parents and children on human sexuality, the advantages of premarital abstinence, and the medical facts of fetal development. A five-year statistical analysis of the program, conducted by Dr. Stan Weed of the Institute for Research and Evaluation, found significant improvements in parent-child communication and, even more important, a substantial decrease in teenage pregnancy.

Cooperation between family-oriented NGOs and those implementing conference documents can produce these kinds of positive results and also help avoid government interventions that destabilize families and ultimately the community itself.

For example, a well-intentioned international mandate to provide adequate housing for women and children, prompted by the deplorable conditions facing abandoned women and children, may—in a perverse twist—exacerbate rather than resolve the very problem it addresses. Such a program, unless draped and administered with the needs, role, and function of the family in mind, may encourage other men to abandon their wives and children to the state, thereby not only undermining the family but rendering the goal of a sustainable community increasingly difficult.

The issues before this conference are complex. Their proper resolution will be greatly aided by careful attention to the views and perspectives of the nongovernmental sector. In that process, I urge you not to forget the most basic and fundamental community of all: the family.





In the Beginning:

The Making of the

J. Reuben

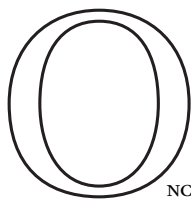




Clark Law School



by Carl S. Hawkins



NCE THE LAW SCHOOL WAS

ESTABLISHED AND RUNNING SMOOTHLY, REX E. LEE QUIPPED THAT IT WAS AN IDEAL SITUATION TO BE DEAN OF THE LAW SCHOOL

WHEN THERE WERE NO STUDENTS OR FACULTY.¹ BUT SUCH A CIRCUMSTANCE WAS NOT A LAUGHING MATTER IN THE

SPRING OF 1972. IN MARCH 1971 BYU'S BOARD OF TRUSTEES HAD ANNOUNCED THE NEW SCHOOL AND APPOINTED A

COMMITTEE TO SEARCH OUT A DEAN AND POTENTIAL FACULTY, BUT A YEAR LATER ONLY THE DEAN HAD AGREED TO ACCEPT

A POSITION. THE SCHOOL NOT ONLY HAD NO FACULTY AND STUDENTS BUT NO BUILDING AND NO LIBRARY.

NATURALLY, WITH NOT MUCH IN PLACE, THE SCHOOL ALSO LACKED ABA ACCREDITATION AND WOULD NOT HAVE IT UNTIL

IT HAD PROVED ITSELF. STILL THE LAW SCHOOL WAS SLATED TO OPEN ITS DOORS IN FALL 1973.

Faculty Recruitment

WHEN APPOINTED dean in 1971, Rex Lee knew he faced serious challenges. But on a 10-point worry scale Lee viewed temporary facilities, design of a new building, and public relations inside and outside of the university as "a collective four or five." But Lee said:

There was one item that, all by itself, measured a constant 10 during that entire first eight months—the faculty. Everything hinged on the kind of people making up the team on that opening day. They would be important not only for that year; they would also affect the quality of faculty and students we would have for years to come. They were the key to our success.

I was particularly concerned about getting some experienced academics. In the first place, we needed some people around who knew how a law school was supposed to work, and I certainly couldn't supply that. And again, if we were going to be accepted within the law school world, we needed to have some people the law school world would recognize.²

Outside of the University of Utah law faculty—and there was apparently an implicit decision not to try to take Mormon faculty members away from that institution—there were fewer than 20 experienced Mormon law teachers around the country. Many of these had already been contacted in the dean-selection process. Dallin H. Oaks, recently appointed president of BYU and well-known legal scholar,³ and Lee concluded that fewer than 12 were potential candidates for the BYU law faculty.⁴

While Lee was still in Arizona, he tried to recruit one of the most experienced of these. Ray Davis was on the faculty of the University of Arizona College of Law. A Harvard law graduate, Davis had been teaching law for 18 years and had published widely. Because of his family situation, Davis was unsure of a move to Provo, but Lee maintained contact in hope that Davis would change his mind.

Lee made early contact with one other Mormon law teacher who had as much experience as Ray Davis. After a one-year appointment as a Bigelow teaching fellow at the University of Chicago School of Law, Douglas Parker joined the University of Colorado law faculty in 1952. Parker had

developed such deep personal attachments to his Colorado colleagues that he hesitated to give them up.

At the time I was a tenured professor of law at the University of Michigan. I followed with interest the plans for the new law school at BYU. In April 1971, less than a month after the official announcement was made, I met briefly with Wilkinson, retiring BYU president and early proponent of a law school at BYU, to discuss plans for the school and to advise him about other Mormon law teachers. Though I had great respect for Wilkinson, a former law partner of mine in Washington, D.C., I went away from the meeting doubting that Wilkinson was planning the kind of academic quality I knew at Michigan.

The following August my meeting with the search committee did little to relieve these doubts. I told the committee that Church resources might be better spent on undergraduate education. And when asked whether I thought enough qualified students and faculty could be recruited to establish a good school, I replied that there would be enough qualified students, but that the faculty would be a close call. I also told them that lawyers without teaching experience could and should be included in

the new faculty if the faculty had a core of experienced teachers to establish a strong academic tradition. I was also asked, as were some other candidates, for my views on the Supreme Court's school prayer decision and on some new trends in legal education, including special admissions to enhance racial diversity and some courses dealing with social welfare issues. While my views on these matters were relatively conservative compared to many law teachers, I got the impression that my answers may have been too liberal for some committee members.

I also told the committee that a good law faculty would need more autonomy than was customary at BYU. I took from this meeting some negative impressions that tended to heighten my concerns for the academic quality of the proposed law school, and decided that I would decline any offer to join the BYU law faculty.

A few days after Rex Lee's appointment was announced, Oaks called to arrange for me to meet with him and Lee in the Detroit Metropolitan Airport where they would be waiting several hours for connecting flights. At the meeting I was impressed that planning was now in the hands of qualified men but still certain that I did not want to leave Michigan. I told them that they could expect me to be a friendly consultant and supporter but not a prospective faculty recruit.

When Edward Kimball, a professor of law at the University of Wisconsin Law School, was interviewed by the search committee in September 1971, he let it be known that he was not interested in becoming a dean. He told them that BYU did not need a law school because there were already plenty of schools where LDS members could obtain a good legal education. A new law school would be very expensive, and he doubted whether they could recruit a reputable law faculty at a university that took religion seriously.



There was nothing impertinent about Kimball's candid advice. He was by nature honest and direct, and he felt no need to soften his words to please the committee.

When Rex Lee called to arrange a recruiting visit the following November, Kimball discouraged him from coming. He reiterated that he was not interested in moving from the University of Wisconsin where he had been happily teaching for 10 years. Lee persisted, saying he was visiting other faculty prospects and would like Kimball's ideas on the new law school. Kimball found Lee to be an engaging person, and he enjoyed giving advice on the new endeavor but reaffirmed his own desire to remain in Wisconsin.

Another promising faculty prospect was Dale Whitman. Whitman had practiced in one of Los Angeles' leading law firms before teaching for three years at the University of North Carolina School of Law and one year at the University of California, Los Angeles, School of Law. In 1971 Whitman accepted an appointment as deputy director of the Office of Housing and Urban Affairs of the Federal Home Loan Bank Board in Washington, D.C. When Oaks was in Washington shortly after his appointment as BYU president, Whitman spoke with him about the same concerns Kimball and I shared for the new law school. After Lee was appointed dean, he paid Whitman a visit in Washington. They spent the evening at Whitman's home discussing plans for the building, library, curriculum, and faculty. Whitman asked Lee who else he was trying to recruit. Lee mentioned me and Kimball but admitted that he had not been able to get a commitment from either. Whitman implied that he might be willing to join the faculty if we were recruited, but he wasn't ready to make a decision yet.

Dean Lee sought the advice of Mormon practitioners around the country during the planning stages of the school. Many of them would later serve as "instant alumni" for the new law school and some would join the faculty.

One of these was Keith Rooker with whom Rex Lee had studied at the University of Chicago. After graduation, Rooker went on to practice in San Francisco and Salt Lake City. When he

met with the search committee in 1971, he recommended Rex Lee for appointment as dean. Immediately after Lee's appointment, Rooker spent a long evening with him discussing plans for the school. Rooker thought that he might be willing to leave private practice and support Lee's efforts if he were asked to join the faculty.

Monroe McKay was another practicing lawyer that Lee wanted to recruit. After law school he joined one of Phoenix's major law firms. In Phoenix he became well acquainted with Rex Lee. When Lee was named dean, he shared his hopes and plans with McKay and asked him to think about joining the faculty. The idea of being a teacher appealed to McKay, but, even with his great respect for Dallin Oaks and Rex Lee, he was not sure that a law school at BYU could accommodate his liberal inclinations.

Terry Crapo was another contemporary and personal friend of Rex Lee. Within a few years of his graduation from Harvard Law School, he was a partner in one of Idaho Falls' leading law firms. He served in the state legislature for six years and was majority leader of the Idaho House of Representatives for four years. Lee spoke with Crapo several times about the possibility of joining the law faculty. Crapo was eager to support the new law school, but his ties to church, community, and profession in Idaho were so strong that he could not bring himself to sever them abruptly.

Among practitioners Lee wanted to recruit for the law faculty, none had a more distinguished record of practice experience than Woodruff Deem. He practiced law for two years in Washington, D.C., as an associate of Ernest Wilkinson and then moved to California where he served for 11 years as a deputy district attorney for Ventura County. In 1961 Deem became district attorney of Ventura County. He established one of the state's most professional and highly respected criminal prosecution teams and was elected president of the California District Attorneys Association.

Wilkinson contacted Deem soon after the law school was announced to see if he would be interested. On a visit to Utah shortly thereafter, he was interviewed by Marion G. Romney who told him individ-

uals would not be called to serve like they were in church positions, but that Deem would be welcome and should consider coming to BYU.

Deem did not think of himself as a legal educator, even though he had one of the best training programs for prosecuting attorneys anywhere in the country. A move to Provo would not only disrupt him and his family in the full flower of his career but would result in the loss of his California retirement benefits as well.¹

Dale Kimball was practicing in the same Salt Lake City law firm with Keith Rooker. Several months after Lee became dean, he opened a dialogue with Kimball and asked him to consider joining the faculty. Kimball had never seriously considered teaching before then, but he felt some sense of obligation to help Lee make the law school into one that would be worthy of respect. He didn't feel he could leave his law practice before 1974, however.

Through this busy winter of planning and recruiting activities, Lee was growing increasingly anxious because he had not received a firm commitment from any of the prospective faculty members. Oaks tried to reassure him that it would all work out. Oaks reminded him that he had once thought the school was not a good idea by rational standards. Nevertheless, inspired church leaders had decided to go ahead with it, so Oaks came to believe that the Lord wanted the school and that their efforts to establish it would eventually be blessed with success. With this conviction he had pledged to the board of trustees that he would fight and scratch and work to make it the best law school it could be.²

As a faithful church member, Lee appreciated Oaks' reassurances, but his own anxieties persisted. He envisioned himself and Bruce Hafen³ standing alone to greet the first class.

But then in Spring 1972, while sitting in a church meeting in Phoenix, Lee had a memorable experience. He was listening inwardly to the problems that were bothering him when a feeling of peace came over him and he realized that Oaks was right. Somehow everything was going to work out. He still could not see how it

was going to come to pass, but now his mind was at peace.⁸ He discovered later that something was stirring among several he was trying to recruit.

Ed Kimball was the first to commit. Though he had eagerly followed the progress of the school since he was first contacted and gave much valuable counsel in a running correspondence with Lee, he still had not been eager to leave Wisconsin. His wife, however, began thinking about possible advantages in a move in terms of church associations for their children and nearness to extended families. After a visit to Provo to survey housing prospects and get a feel for the campus, Kimball called Lee in early May to express willingness to join the new faculty.

I was by then moving in a similar direction. Like Kimball, I had corresponded with Lee during the winter on various planning matters and had become convinced that he would make a fine dean and wanted to establish a good school by academic standards. A visit from Bruce Hafen impressed me with his personality and depth of interest in good legal education. As a result of these contacts, I wrote to Lee in February and told him that, though I had not changed my mind about remaining at Michigan, I might consider a visiting appointment for one year.

Lee came to Ann Arbor again in March and made me a firm offer that convinced me that BYU was ready to pay competitive salaries to recruit a good faculty. In April when I came to Utah for general conference, I met with Academic Vice-President Robert Thomas and Commissioner Neal A. Maxwell who laid many of my residual concerns to rest.

Back in Ann Arbor I consulted with my family and fasted and prayed. In mid-May, 1973, I called Oaks. Bruce Hafen provided the following account of what happened at their end of the line:

I remember the day that Rex and I were in [Dallin's] office. . . . Bob Thomas was there. We were talking about the Law School. None of the faculty we had approached or pursued had committed to come yet. It was a tense time. . . . The phone rang and the secretary said, "I think it's Professor Hawkins from Michigan on the phone."

In

May 1972, Carl S. Hawkins, then a professor at University of Michigan Law School and nationally

respected legal scholar, became the second (of the several LDS academics being hotly recruited) to accept a post for the newly authorized BYU Law School. As with other early faculty members, Hawkins' acceptance was a leap of faith. The courage of these earliest faculty members and administrators provided the catalyst needed to move other faculty and students to leap as well. From the time he was first contacted in the "spiritual creation" stages of the school until his retirement in 1991, Hawkins figured in many aspects of planning, staffing, funding, and recruiting. He served as acting dean from 1975 to 1977 and as dean from 1981 to 1985. Few could be better qualified to provide a history of the law school's founding. Rising to that need, he recently completed a book-length draft, titled "The Founding of the J. Reuben Clark Law School," from which this account is excerpted. Hawkins draws on published biographies of key figures, speeches delivered at important junctures, correspondence and conversations with faculty and students, documents collected during his terms as dean, issues of the *Clark Memorandum*, newspaper articles, and his personal history. The result is a thorough recounting of landmark events, conflicts, and resolutions that refined the new institution and brought it to flowering. Included are sketches of the lives of founders, faculty credentials and contributions, student body composition and accomplishments, evolution of the curriculum, major debates over the goals of the school, accreditation struggles, and acceptance into the larger community. From the poignant dedication—"to the memory of Terry Crapo, Woody Deem, and Rex Lee. Our best were taken first"—to the final lines: "Successful institutions . . . are established by people who have a vision that reaches beyond their own concerns and who have the faith to work and sacrifice for that purpose—people like Terry Crapo, Woody Deem, and Rex Lee, whose work lives on in the J. Reuben Clark Law School," the account is honest and fully satisfying.

The accompanying excerpts concentrate on Hawkins' accounts of recruiting the faculty and students for the charter class and the graduation of that class.





Dallin said, "I think I had better take this call." He went to his desk and picked up the phone. He talked too softly for us to hear him, but we waited while he talked, chatting among ourselves. When Dallin came back he was touched. . . . He looked out the window at Timpanogos and then back at us. I saw tears in his eyes as he said, (He had wondered, too, if there should be a Law School here, by the way.) "I guess the Lord really wants this law school." Then he started to smile and said, "I guess he really wants it to be a good one. Carl's coming."

We whooped and hollered. It was like the moment in Camelot when King Arthur says, "Lancelot is coming."

Two other soon followed suit. When Dale Whitman learned Kimball and I had committed, he decided to join with us. Later in the summer of 1972, Keith Rooker confirmed his decision to leave private practice and come to BYU.

Woody Deem was still tentative. He thought it might be wise to test the waters before making a final decision, so he agreed to come as a visiting faculty member or a part-time lecturer in law. Thus his name would figure in the planned announcement to publicize BYU's initial success in recruiting qualified faculty.

The press release issued in August named nine faculty members who would be on hand when the law school opened its doors in one year: Dallin Oaks, Bruce Hafen, Rex Lee, and librarian David Lloyd—plus new recruits Edward Kimball, Carl Hawkins, Dale Whitman, Keith Rooker, and Woodruff Deem.

These nine had impressive professional credentials. All had graduated at or near the top of their classes from five good law schools. All nine were members of the Order of the Coif, the national honorary society for legal scholars. All had law review experience. Collectively they had 51 years of teaching experience at eight law schools, 40 years of experience in private practice, and 29 years of law-related work in government or public service. Three of them had served as law clerks to justices of the United States Supreme Court. Only two or three of the nation's most prestigious law schools could claim as many as three faculty members with that

credential, and no other law school could boast that one-third of its starting faculty had that distinction. Four widely adopted law school casebooks had been published by three of the first BYU law faculty members, and all nine had published articles, notes, or comments in professional journals.

After the initial announcement of the faculty was made, Gerald Williams, who had been a visiting professor at the University of Kabul in Afghanistan and at Arizona State University, was enthusiastically welcomed to the roster. In later years more of Rex Lee's early recruiting efforts would pay off when Monroe McKay, Dale Kimball, Doug Parker, Ray Davis, and Terry Crapo joined the faculty.

Getting a Student Body

IF FACULTY WAS Rex Lee's first order of business, recruiting a charter class was the next. Through the fall, winter, and spring of 1972–73, this was his major preoccupation. As with the faculty, he was looking for quality:

The quality of our first students would not have as lasting an impact as the quality of our first faculty, but I concluded that it would last for several years. Moreover, the members of the first class were necessarily taking more of risk than any future classes, and consequently, during the school year 1972–73 Bruce [Hafen] and I spent a large share of our time recruiting our charter class. Frankly money helped. We developed some very fine speeches about sharing the one-time experience of creating something really significant, but I will tell you that once the university committed some scholarship money to us, we started talking to an entirely different group of people.¹⁰

Lee's best recruiting assets were his energy and enthusiasm for the task, his powers of persuasion, and his genuine enjoyment of personal contact with prospective students. To those who already knew that they could be admitted to good established law schools, he offered the unique opportunity to come

to a new law school sponsored by their church and to personally influence the kind of law school it would become.

One can see a pattern similar to the faculty recruitment process. Lee and Hafen would identify outstanding individuals they wanted at the law school, initiate individual recruiting efforts, and then use their successes to influence other undecided prospects. For example, Monte Stewart was widely respected as one of the academic leaders in his senior class, and it was widely known that he had been offered admission at Harvard Law School. His decision to join the charter law class at BYU influenced a number of his classmates to do the same.¹¹

Hafen's and Lee's efforts were responsible for most of the star recruits, but a few came from other efforts. For example, Roy Ross, a graduate of Michigan State University who had been offered admission to the University of Michigan Law School, sought my advice. I assured him that the new law school would be a good one by academic and professional standards, that a law degree from BYU would not carry as much prestige or lead to as many employment opportunities as one from Michigan, but that he might find offsetting advantages in terms of closer mentoring relationships and more congenial social relationships. With the added incentive of a full tuition scholarship, Ross chose BYU.

Many students, like Calvin Bayles, attested to "spiritual influence" in their deciding to attend BYU over other schools. From more than 400 applicants, 214 students were offered admission; of these 157 accepted. The ratio of acceptances to offers was much higher than most established law schools, confirmation that the majority of these applicants had special reasons for coming to BYU even though they could have been admitted to other good law schools.

Over half of the charter class were BYU graduates, but 100 of them had previous undergraduate experience at schools other than BYU. One-third came from Utah, with two-thirds from 24 other states. Most were returned Mormon missionaries, and about two-thirds of them fluently spoke a foreign language. Their

median undergraduate grade point average was 3.42, and their median law school Admission Test was 624 (on an 800 scale), placing them in the 90th percentile of all national test takers. The 25 highest LSAT scores for members of the charter class averaged 704, above the 99.5 percentile. The admissions credentials were higher than the national average for all law schools, but the class admitted two years later would register 40 points higher on the LSAT scale, and within five years the J. Reuben Clark Law School would be admitting classes with LSAT scores ranking in the top 20 law schools.

Ground was broken for the law building on Law Day, May 1, 1993,² with completion scheduled for the 1975–1976 school year. But in the meantime, the school had no building of its own. To fill this need, the university leased temporary quarters in a

legal system unless they were rigorously trained in critical analytical thinking, including candid exposure to competing contemporary ideologies.

The principal speaker was Marion G. Romney. He declared, “The board of trustees, in establishing this school of law, did so that there may be an institution in which you, the members of this class, and all those who shall follow you, may obtain a knowledge of the laws of man in the light of the laws of God.”³

Following president Romney’s address, Dean Lee began the first class. David Kimball was the first student called upon to state the assigned case. Lee chose to introduce the case method of study with a series of Supreme Court decisions under the equal protection clause of the Constitution. After witnessing the rigorous analytical questioning to which Kimball was subjected, other students anxiously reviewed their own prepara-

thing of defining importance to the development of a new institution, only to find that it was all they could do to cope with the demands of traditional legal education. They had come expecting that church sponsorship would somehow infuse their legal education with inspired insights, only to find that they would have to master the law by the same grinding processes that were used in secular law schools. Some experienced keen disappointment when conflicting interests in our legal system were not resolved by homilies, and a few felt that they had been misled or even betrayed by the faculty.

Faculty members who had taught at other law schools observed, however, that, except for higher anxiety levels, the charter class performed like typical first-year law students. Unlike my experience in Michigan, however, where I often had to confront my students with more conservative ideas and arguments, at BYU I

“We whooped and hollered. It was like the

former Catholic school, St. Francis, located south of campus on ninth east. Because St. Francis School was too small to accommodate the opening ceremony on August 27, 1973, a capacity audience made up of students and their guests gathered in the Pardoe Drama Theater on the main BYU campus. In that meeting Oaks challenged the new law school to be worthy of its name and to promote devotion to the rule of law and concentrate on teaching fundamental principles of law. He explained that lawyers must objectively study and even be prepared to advocate all rational points of view so they will be able to meet any opposing arguments.⁴ He said,

Students of the J. Reuben Clark Law School must, therefore, be expected to study and master what they may well choose never to advocate. If that principle is clearly understood, it will save a great deal of misunderstanding on the part of our students and those who anxiously watch their instruction.”⁴

Such a statement would have been unnecessary at a secular law school. Oaks wanted to help the school’s supporters to understand that graduates could not become effective defenders of the Constitution and other basic values in our

moment in Camelot when King Arthur says, ‘Lancelot is coming.’”

tion before moving down to St. Francis for the afternoon session in their introductory course in legal method. Regular first-year classes in contracts, civil procedure, criminal law, real property, torts, and legal writing began a few days later.

Most first-year law students experience high levels of anxiety. The case method of study, emphasizing inductive reasoning, specific factual context, and critical analysis more than concept learning, is a disconcerting departure from most undergraduate education. Instead of a “giving person” who fulfills students’ needs and rewards their performance, the law teacher is seen as a relentless, demanding figure, always asking questions, never quite satisfied with the answers.

These anxieties were aggravated for the charter class by circumstances peculiar to the new law school. There were no upper class students to mediate their anxieties by interpreting the “real demands” of the system or by offering personal examples of how to survive. To some extent, members of the charter class became victims of romantic or unrealistic expectations. They had come expecting to contribute some-

had to offer more liberal views to make sure that they received adequate consideration. The charter class included a few students who were just as sharp as the best at Michigan, although the layer at the top might have been just a little thinner at BYU. On the other hand BYU students generally seemed more highly motivated, though they needed or expected more “hand holding” or benevolent assistance from the faculty.

One student observed that the charter class had a “unique and remarkable” relationship with their professors. “These were some of the best legal minds in the country, . . . and without any upperclassmen, we had them all to ourselves. We developed associations with them that went beyond the usual teacher-student relationships. While we respected them, we considered them friends to be trusted rather than professors to be feared. . . . [F]ew law classes in the country could say the same.”¹⁶

Rex Lee later referred to this first year class as “an interesting phenomenon.” He recalled that he had been told by Willard Pedrick, founding dean of the Arizona State University Law School:

*The fact of the first class is inevitable. Every law school has to have one. You wish you didn't, but you do. . . . [W]e don't know why they turn out just the way they do. The most that you can hope for is to get them graduated as soon as you can and then fumigate the building once they leave.*⁷

Dean Lee offered a more favorable assessment of the BYU experience:

*That really wasn't the case with our first class. I've never been closer to any group of students than I was to that one. There were times . . . when the urge to fumigate was prominent, but that class will always hold a very special place in my heart.*⁸

Graduation

THE CHARTER CLASS graduated on April 18, 1976. Of the 156 students originally admitted, 147 graduated.⁹ Following the university convocation in the morning, the Law School held a reception for law graduates and their guests in the afternoon and then met for the official law school commencement exercise in the de Jong Concert Hall of the Harris Fine Arts Center in the evening.

The graduates' first choice for a guest speaker was Dean Rex Lee, then on leave as assistant attorney general in charge of the Civil Division of the Justice Department. Dean Lee was honored to accept the invitation. He told the graduates that there were "few tributes that could please [him] as much."²⁰ He acknowledged the distinctive role of the charter class:

*Clearly, there will never be another class like this one. . . . Never again will the quantity or intensity of effort in recruiting and admitting each individual class member be repeated. Nor for that matter, will it ever need to be, thanks largely to you, and the fact that three years ago you were willing to come and share with the joys—and at that time, the risks—of a new law school.*²¹

Typical on such occasions, Lee admonished the graduates to think of law school as the beginning and not the end of their legal training. Then he closed with these remarks:

Now I'm going to say something that I hadn't really planned today but that I want to be the last words that you hear as a part of your official law school program. A dominant feature of your law school training has been to instruct you in the skills of skepticism. This has been a necessary part of your training as advocates. But I want you to hear one last time from me that while I value those skills as highly as anyone, and while I feel very strongly that the Law School can continue to give that kind of rigorous, intellectual training, there are absolutes in this world. And just as there is a place for skepticism, there is also a place where skepticism is as inappropriate as it is unnecessary. I have serious doubts concerning the eternal verities of the Rule of Shelley's Case, the doctrine of prior restraint, the law of offer and acceptance, or even—as much as it pains me to say so—the Rule of Reason under the Sherman Act.

*But I want you to know, my brothers and sisters, that there are eternal verities. I was not present on the Spring day in 1820 when Joseph Smith saw the Father and the Son, nor was I present some nine years later when he and Oliver Cowdery had hands laid upon their heads and the Aaronic Priesthood restored. But I want you to know with all the surety of one who was not there at that time, that it really happened, and that those truths are far more important than anything that you ever learned in Law School.*²²

Graduates could not doubt that day, though they might have at times in the preceding three years, that the J. Reuben Clark Law School was uniquely a place to "obtain a knowledge of the laws of man in the light of the laws of God."

Notes

1. Unless otherwise noted, factual recitals are based upon the author's personal knowledge, interviews and conversations with persons mentioned, or unpublished memoranda, reports, letters, and documents in the author's files.

2. Rex E. Lee, "Thoughts After 15 Years," *Clark Memorandum*, Spring 1990, 14.

3. Oaks had been professor of law at the prestigious University of Chicago School of Law. He was a productive and widely published legal scholar and an able administrator who had served as assistant dean and acting dean of his law school.

4. Transcript of remarks by Rex E. Lee at a Law School fireside, September 18, 1988, 5–6.

5. Kimball, "Woody Deem; A Colleague Remembers," *Clark Memorandum*, Spring 1990, 19–21; "Woody Deem Retires," *Clark Memorandum*, March 1984, 3–5.

6. Author's notes on remarks of Dallin Oaks at Law School faculty party at home of Rex Lee, August 26, 1988, to celebrate 15TH anniversary of opening the Law School. See also, Hafen, "Law School History," unpublished draft, January 27, 1975, in author's files.

7. Hafen was appointed as assistant to the president for special projects, primarily the planning for the new Law School, soon after Oaks became president of BYU. Hafen's excellent law school record, deep scholarly interests, and superior administrative skills were all called into play in establishing the Law School.

8. Lee, 14–15.

9. Excerpt from transcript of Bruce Hafen's remarks at retirement dinner for Carl Hawkins and Douglas Parker, April 27, 1991.

10. Lee, 15–16.

11. Anecdotal accounts of student recruitment in this section are based upon interviews and conversations with members of the charter class and letters from them in author's files as well as copies of Law School internal memoranda and reports.

12. Significantly, ground was broken on May 1, 1995, for an addition that would double the size of the library and provide facilities for the 400,000 volume collection, burgeoning electronic capabilities, and updated individual student carrels. On that day the library was officially named the Howard W. Hunter Law Library.

13. "Ceremonies Open BYU Law School," *BYU Today* (Alumni Magazine), v. 27 no. 6, September 1973.

14. As reported and quoted in *The Daily Universe* (BYU Student Newspaper, August 30, 1973).

15. *Supra* note 24.

16. Undated [1996] letter from Wilfred W. Andersen in the author's files.

17. Lee, 16.

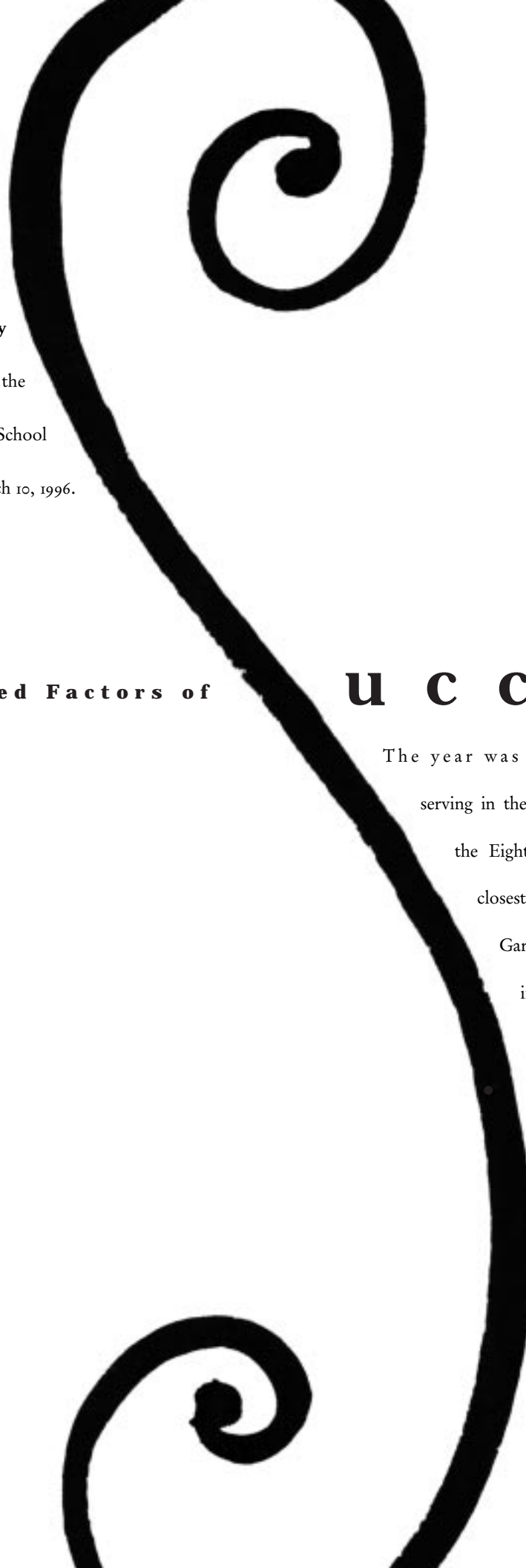
18. *Ibid.*

19. The 21 members of the class who qualified for early graduation by taking summer classes at BYU and University of Utah are included in this total.

20. Lee, "Convocation Address 1976," *Speeches at the First Convocation of the J. Reuben Clark Law School*, 3.

21. *Id.* at 4.

22. *Id.* at 8.



by Elder John K. Carmack

Illustration by Philippe Lardy

This address was given at the

J. Reuben Clark Law School

fireside, March 10, 1996.

Unmeasured Factors of

u c c e s s

The year was 1956. I was in Seoul, Korea, serving in the Adjutant General Corps of the Eighth Army Headquarters. My closest friend at the time was David Gardner, then in dangerous army intelligence work along the coasts of China, but housed in Seoul. We were both struggling to decide what to do with our careers when we left the army. He was considering real estate as a career, and I, city management. But in



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the back of my mind law school was still a possibility, and I had applied to UCLA School of Law as insurance against a change of mind. We spent many nights in the library talking, thinking, browsing, and considering our options.

David chose the road into academics and university administration. You know him as the former president of both the University of Utah and the University of California. I chose law school. We still laugh when we recall David's reaction to my suggestion that he go back to graduate school. He rejoined with, "Carmack, I'm just not the academic type." I have never regretted my own decision, although it isn't the only road I could have taken.

For centuries lawyers have been maligned and their role in society misunderstood. For example, in the year 1790, the town of Watertown issued this annual report:

Our inhabitants now comprise some 525, of whom two are blacksmiths, one is a doctor, three are storekeepers, and one is an innkeeper. We have no lawyer amongst us, for which latter fact we take no credit to ourselves, but give thanks to almighty God.

I visit with you tonight from the perspective of one whose legal career has been satisfying, rewarding, and in most ways very ordinary. My career as a lawyer is probably over, although its benefits for me and my family continue. Perhaps this helps me see law school in the context of life and to observe and report some unmeasured factors affecting success.

At this point in your lives, due to the extraordinary pressure and competitive environment of law school, many of you probably wonder if the profession or some other field of endeavor will be satisfying and rewarding.

If you are not in the top of your class, you may even wonder if you will have opportunities to prove your worth. It doesn't take a mathematical genius, how-

ever, to figure that 90 percent of us are not in the top 10 percent in class standing, and that will be true with 90 percent of those with whom we interview and compete. But in a profession where class standing is considered much too seriously, one's standing can be of concern and damaging to one's self-esteem.

Remember the fact that you are all achievers: qualified, bright, and energetic people. Most of us are just common folks, as President Hinckley once described himself. In time you will find that it is fine to be a simple, hardworking, garden-variety person, not accustomed to walking in the elite corridors of life.

Tonight I will share some convictions, concepts, and principles as a kind of road map to remember in the days and years after law school. During my years of law practice, I noticed that certain people rose to the top in their work. Class standing and LSAT scores were not good predictors of whom they would be. Their rise had more to do with habits, abilities, characteristics not readily apparent, and good choices along the way. Almost any graduate of a good law school has useful writing and analytical skills. These are important, but other factors matter even more. Raw intellectual talent counts for much and is a wonderful gift, but other things seem to make even more difference.

May I draw an analogy from success in basketball? I've noticed that John Stockton of the Utah Jazz, who started in the NBA the year I arrived in Salt Lake City, has risen steadily to the top. In those early days most observers thought he was lucky to have a chance to play in the NBA. Other players seemed to have more physical ability and raw talent, although Stockton was not deficient in those things. Somehow he has surpassed most of them. His place in basketball history is now certain. He holds the all-time record for assists and steals and is high in other important categories. Like Cal Ripken in baseball, he has been almost indestructible and steady, playing nearly every game since arriving on the NBA scene. He is a perennial all-star performer and has been selected for his second Olympic Dream Team. Years ago many observers thought Kevin Johnson would

be Stockton's superior. He was and is a superb and talented player with extraordinary athletic gifts, but somehow Stockton has risen to the top year in and year out. Why?

Likewise, new players in the NBA like Jason Kidd are highly touted, but a wise observer will say, "Let's wait and see. Will he maintain his intensity, fit in well with his team, play in such an unselfish way that he makes others better, improve year by year, avoid burnout and injuries, and maintain a steady personal life?"

Since I am using basketball as an example, consider the case of John Wooden, who may have been the finest college basketball coach of all time. From the beginning he was a good coach with a fine grasp of the game, but he gradually developed into a great coach. How did he do it? One way was the practice of his own aphorism: "It is what you learn after you know it all that counts."

Great corporate lawyers, such as you have observed in President James E. Faust and President Howard W. Hunter, develop wise and wonderful perspectives and instincts applicable to everything they do. The French financier and international organizer Jean Monnet once noted that American corporate lawyers "seemed peculiarly able to understand at once the consequences of unprecedented situations and immediately to set about devising new and practical ways of dealing with them."

Trial lawyers may not always be the greatest analysts or legal drafters, but they develop their unique skills and abilities through hard work and practical education during years of trial experience. They learn the fine art of preparing, presenting, persuading, dramatizing, and convincing. An excellent lawyer, John W. Davis, once observed:

True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures—unless as amateurs for our own principal amusement. There is little of all that we do which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men's burdens and by our efforts we make possible the peaceful life of men in a peaceful state.

You can't measure all these skills and this knowledge in an LSAT test or discover them through examining law school grades, as important as those may be. Don't you sometimes have a vague feeling that we may be excluding the best possible lawyers from the profession by our emphasis on classroom performance and aptitude tests? But since we don't yet know how to measure the other less tangible aptitudes, we are left with our imperfect system. For those embarking on a legal career, these seemingly unmeasurable things, when added to our outwardly visible academic performance, can take us to the top like a John Stockton or a John Wooden.

What these intangibles are is important to know; social science is just beginning to discover and analyze these other factors. For example, Richard Herrnstein and Charles Murray, who wrote *The Bell Curve*, giving much credence to the concepts embodied in the notion of IQ, concluded:

Perhaps a freshman with an SAT math score of 500 had better not have his heart set on being a mathematician, but if instead he wants to run his own business, become a U.S. Senator or make a million dollars, he should not set aside his dreams. . . . The link between test scores and those achievements is dwarfed by the totality of other characteristics that he brings to life.¹

In his groundbreaking book *Emotional Intelligence*, Daniel Goleman identifies some of those overlooked and hard-to-measure characteristics that bring success as "being able to motivate oneself and persist in the face of frustrations, to control impulse and delay gratification, to regulate one's moods and keep distress from swamping the ability to think, to empathize, and to hope."²

Years ago Stewart Grow, who as a political science professor and prelaw adviser guided many future lawyers such as Elder Dallin Oaks, called these intangible factors "mugginess." I think he meant to convey the idea of hanging in there and having mental and emotional toughness. Coach Vince Lombardi of the Green Bay Packers often emphasized that "mental toughness is essential to success."

What are some ingredients important to your success? I will start with perhaps the most important one, difficult as it is to predict or measure. This ingredient is essential for success in almost all human endeavors, certainly for businessmen and lawyers, which most of you will be. In his excellent little book *The Effective Executive*, Peter Drucker put his finger on this intangible as follows:

By themselves character and integrity do not accomplish anything. But their absence faults everything else. Here, therefore, is the one area where weakness is a disqualification in itself rather than a limitation in performance capacity and strength.³

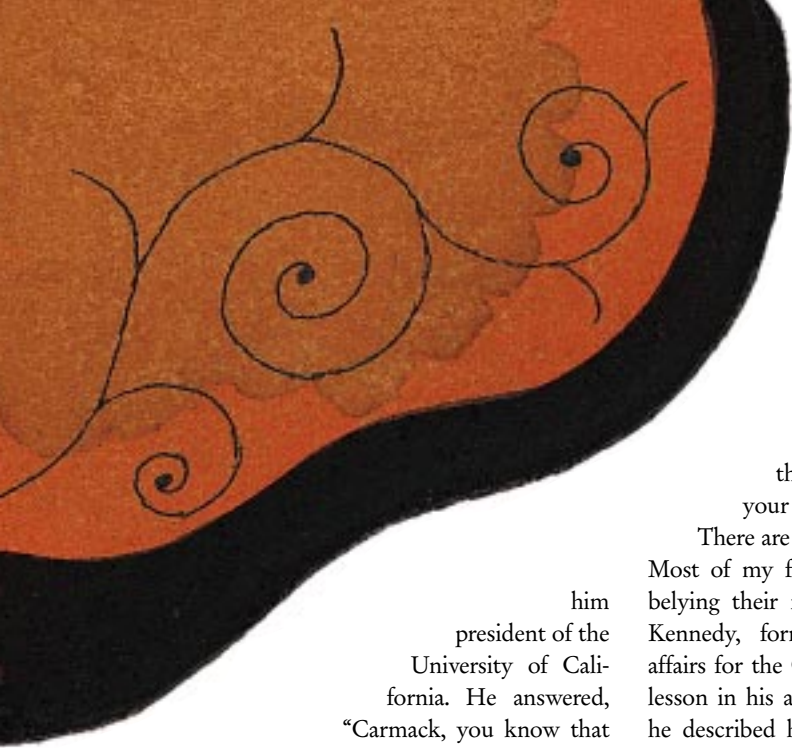
Integrity involves the concept of a whole and integrated person, all of his or her parts acting harmoniously, honestly, and completely. The decisions of such a person are honest and wise, their effect on the lives of others carefully considered.

Let me use an incident from David Gardner's career as an example of integrity in action. It not only illustrates the point but has a happy ending.

When David had served as University of Utah president for about five years, the Board of Regents of the University of California conducted a search for a new president of that statewide university system. David, having previously served as a vice president of the university, was nominated by several influential people. Early in the process I visited with a regent with whom I served on a board of directors in southern California. I told him of my friendship with David, who I recommended highly. My friend was on the search committee and took an interest in David's qualifications.

One night my friend called to ask me if I could locate David. It seemed that the committee had narrowed the candidates to three, and my friend said he had the votes to select David. With some distress, however, he reported that David had refused the position, and he then pleaded, "Would you please call him and get him to change his mind?"

I reached David late in the evening at his home in Salt Lake City and explained that my friend had the votes to appoint



him
president of the
University of California. He answered,
"Carmack, you know that
I grew up in sight of the
University of California in Berkeley.

It would be the highest honor I could imagine as an educator to be president of the university, but I am in the middle of important matters here that will take a few years to complete. I am certain that the university would understand and let me go, but there would always be a feeling that I had left in the middle of vital matters. And that wouldn't be right. I can't do that and live with myself."

I better understood then why David had enjoyed such an excellent reputation in his field. I called my friend, who sadly accepted David's declination. The regents appointed another fine educator, who served about five years and then resigned. Perhaps remembering David's integrity, the regents nominated him again, and this time he accepted, serving with distinction.

In the field of law, where one is entrusted with people's lives and fortunes, integrity takes on heightened importance. The exigencies of the moment sometimes persuade some of our number to thrust aside their integrity to achieve some seemingly desirable goal. The great English lawyer and jurist Thomas More refused to take an oath supporting King Henry VIII because the king's cause was wrong and corrupt. In *A Man for All Seasons*, More's daughter Margaret and his wife visited him in prison where he awaited execution. Margaret asked him to "say the words of the oath and in your heart think otherwise." More explained, "When a man takes an oath,

Meg, he's holding his own self in his own hands. Like water. [He cups his hands.] And if he opens his fingers then—he needn't hope to find himself again. Some men aren't capable of this, but I'd be loathe to think your father one of them."⁴

There are many such women and men. Most of my fellow lawyers had integrity, belying their reputation otherwise. David Kennedy, former head of international affairs for the Church, taught us a valuable lesson in his article "Personal Integrity" as he described his reaction to an offer tendered him by Continental Bank chair Walter Cummings. Kennedy's reply to the offer to become Continental Bank board chair was to explain that his priorities were home, Church, and work—in that order. He said he must speak to Lenora and the family before giving his answer.

It became quite clear that I should accept the position. I could and would continue my family and church responsibilities (as counselor in the Chicago Stake presidency) as well as the work of the bank, in that order. And I would neglect none of them. But I felt an obligation to explain my priorities to Mr. Cummings.

Notice how David Kennedy clarified his priorities clearly and up front. Cummings not only agreed to the conditions but said that his own priorities (he was a devout Catholic) were the same.⁵ Kennedy, who incidentally was a law school graduate, went on to become a national figure, taking Continental Bank to the forefront in international banking and becoming u.s. secretary of the treasury.

Integrity is the one essential characteristic without which all other characteristics fall.

For want of a better label, I will call the second concept simply successfully managing your career. Robert Frost, we remember, wrote of two roads and taking the one less traveled by. He concluded his poem with the words "And that has made all the difference."⁶

In deciding what road to take, we need to know something about ourselves and be honest in our personal evaluation. When you look in the mirror, what do you see? Do you see a whole person or a lawyer? I think we are all merely people with complex talents and abilities—the products of homes and churches and deeply held beliefs. We have studied many subjects in school, experienced a variety of challenges, and have strengths and weaknesses. A part of our education is a brief three-year stint in law school.

Where your career will take you and what contribution you will make in life has much more to do with things other than your law school training, although that is an important era of your lives. Your deepest interests, beliefs, and talents will assert themselves as time goes by. The decisions you make along the way will be critical. They will be the keys in successfully managing your career.

I have a friend who dropped out of law school for financial reasons. With his talent he would have made an excellent lawyer. Surely he could have found a way to complete his education, but he didn't. Having multiple talents, he went another direction. Although he was rising rapidly in that field, he then switched to a third field. Wisely he stayed with his new work for many years, rising to a high level of competence and developing a fine reputation. Seeing other opportunities on the horizon, however, he made another series of abrupt about-faces that eventually led to a dead end.

My friend is a fine person, and maybe it wasn't so important that he take the right road, but my honest feeling is that his decisions resulted in achieving much less. Today he deeply regrets his failure to manage his career wisely and successfully.

How will you manage your career? You will leave BYU with an excellent general education. I doubt that we could have a better general education than law school affords. You will have tools and skills and potential opportunities in law practice, government, education, or business. Along the way you will face two roads, perhaps several times. The roads you take will make all the difference. Since you are unique, which of the roads is right for you will be something only you can discover.

One significant help is the advice of family and good friends. In deciding which road to travel, I always counseled with my best friend in prayer. But my own earthly father, a successful, self-educated small businessman who loved his work, gave me excellent guidance and helped steer me away from mistakes three or four times. I made it a point to seek and obtain his feelings when I faced two roads. In one sense, his advice was uneducated because of his limited schooling opportunities, but that advice always seemed visionary and practical. I find President Hinckley to be a similar type of person. One can trust his advice because he is such a wise and experienced man besides being a man of God. We need such people, and they are available.

We all need vision and perspective in making decisions. In a speech to the Harvard class of 1913, Oliver Wendell Holmes, Jr., said:

I learned in the regiment and in the class the conclusion, at least, of what I think the best service that we can do for our country and for ourselves: to see so far as one may, and to feel the great forces that are behind every detail . . . ; to hammer out as compact and solid a piece of work as one can, to try to make it first rate, and to leave it unadverted. [Emphasis added]

In seeing where you fit into the future, you will also need to assess your strengths in making choices. Don't doubt yourselves, but also don't overestimate yourselves. You can know, if you are honest, if something is within your capability and competence level. Peter Drucker said, "There is no such thing as a 'good man.' Good for what? is the question."⁷

Be careful not to jump at a job simply because it promises to be lucrative. Assess the fit of the job with your strengths and your vision of the future. Avoid changing compulsively from one pathway to another. It takes many years to grow a tree. Keep focused on long-term objectives. Build stability into your career management and be conscious of who you are. Ask yourself if your best strengths are analytical thinking and writing? Or are you a more creative and expressive per-

son? Are your best skills those of dealing with people? Perhaps you are a potential driving executive. Be realistic. I've advised more than one friend to stop pointing out his or her own weaknesses. We all have them, but so what? Our humility can be shown in other healthy ways.

What you truly are will come out in time. The more you know yourself and manage your career wisely, the more excitement and joy you will feel in what you do. Some of the unmeasured strengths that bring success to a lawyer include

- personal and family stability
- ability to work steadily and hard
- skills in understanding and getting along with people
- ability to size up situations
- being street-smart, i.e., learning from experience and having common sense
- ability to think procedurally about tasks
- ability to communicate on the level of common people

Having first emphasized integrity as the one essential ingredient of a successful career, followed by the advice just concluded to manage your career wisely, I turn to my third and last suggestion. This is simply to grow as your career unfolds. Actually, I would give the same advice to everyone, even those who, like my daughters, may not have full-time careers. My oldest daughter is a full-time mother of five who graduated from this law school. She is an excellent mother who tries to grow with the times in that role as well as keep up as much as possible in the things she studied while attending the university.


If we fail to grow by developing new knowledge and skills and keeping up, we are destined to become professionally irrelevant. Growing with your work is critical. If you do, you will find in time that you have surpassed most of your colleagues. Though you start with an excellent education, most of what you will need to know and the skills you will need you have yet to learn. Master the details and skills required by your chosen work. Beyond such mastery you will discover the rarefied level of the unwritten laws of your field, or, as Coach Wooden said, "What you learn when you know it all."

In the process you have to avoid burnout, discouragement, and the temptation to quit and drop out. Common sense, balance, and the right priorities between home, church, and work will help you avoid these failures, as David Kennedy's example teaches us. And you need to serve your church and your community in the process. I've kept handy this 1994 statement by George Wharton Pepper. From the vantage point of a brilliant legal career, he said:

I estimate that through the year about half of the whole amount of my activity has been gratuitous nonlegal service to the church, to the university, to the profession, to the community, and to individuals; and that of the other half, which represents my legal work, about a quarter has been done without charge.

Lawyers do much work without fee, and rightly so. Once I asked President John K. Edmunds, who presided over the Chicago Stake while practicing

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law, how he handled Church members who had no idea of the value or cost of his legal services. He told me of doing hours of legal work for a sister who had no idea of its value. Though he decided to do it freely, she insisted on paying the fair value of his services. He agreed to accept what she felt was fair. When she reached in her purse and handed him a 50-cent piece, he gravely reached in his pocket and handed her a quarter in change.

The profession has an immense capacity to absorb problems. I would estimate that during 20 years of law practice I spent my time similarly to Pepper's. Great achievements require diligence, taking risks intelligently, and sometimes working around the clock. The standards and competition are high in our work. Yet people grow by courageously taking responsibility and discharging it. We should not shy away from our challenges.

I discovered that there is help from above. I have settled or solved more than one lawsuit or problem based on dreams, intuition, and the whisperings of the still small voice.

I now have a second career: my calling in Church leadership. The Church calling probably fits my own interests and background well at this stage in my life. You may want to establish a goal of serving your church and community after a certain age.

Another good friend, Judge Clifford Wallace, left a fine career as a trial lawyer to become a federal judge. There his skills, honed in years of Church leadership, have brought him to the top of his second profession as a judicial administrator, presiding judge, and twice a United States Supreme Court finalist. I feel his success has been due more to his leadership ability than his pure legal talent—in which he was not in the least deficient. He has grown, developed, and worked exceptionally hard. His emotional IQ has been a great asset.

Yes, I have found much of value in our profession. John J. McCloy, prominent in many international legal and leadership capacities, captured my feelings well when he said:

He (the lawyer) has learned to gauge human emotions and to make due allowance for

them, for in his practice he has seen them flare and subside; his training has taught him the practical necessity at least of assessing the other side's point of view if not of conceding its merit; it has similarly given him the ability to judge what are the important and the less significant facts of the situation. I think that practice in explaining matters clearly and concisely and in drafting documents which are to be read and understood by others, sometimes others at a far removed point of time as in the case of a will or deed, also has important use in these situations. The lawyer who has faced the give and take of the courtroom, who has debated before the appellate court with lawyers of equal skill and resourcefulness, or who has run the gamut of conferences with counsel for opposing sides has usually a rich background with which to face (the negative comments) of public life.

Remember my third point: grow with your work. When President Franklin D. Roosevelt visited the 91-year-old Justice Oliver Wendell Holmes, Jr., he found him reading Plato's *Republic* in his study. When he asked why on earth he was doing that, Holmes replied, "I'm reading to improve my mind."

Having made my three points—anchor your career with integrity, manage it wisely, and grow with it—I add a few feelings about how my law training relates to my service as a General Authority. In this calling I try to think of myself as a General Authority who once was a lawyer rather than a lawyer who is a General Authority. The experience of having practiced in a small law firm in western Los Angeles has enriched my Church service. But I don't think of myself as a Church lawyer any more than Elder Russell Nelson thinks of himself as a Church doctor.

My wife and I spent four years in Asia meeting with government officials in 23 countries including India, Pakistan, Vietnam, Cambodia, China, and Mongolia. The legal skills of drafting documents, negotiating agreements, handling legal and political procedures, and general advocacy were useful there.

During similar U.S. assignments, I have given testimony before the California legislature, the Los Angeles County Board of

Supervisors, and the United States Congress. I have worked in antipornography legislative matters and served on executive committees of the Religious Alliance Against Pornography and the National Coalition Against Pornography.

I have served on the Salt Lake Chamber of Commerce Board of Governors and the Redevelopment Agency Advisory Board and have worked on issues such as school prayer in Utah. I have submitted to interviews with newspaper and television reporters.

To say that those three years of law training have benefited me in this calling is an understatement. I would add, however, that the two years I served as a young missionary have benefited me even more, and the years as a Church leader were critical in preparing me. I believe my three years as a mission president were equivalent in practical education to my three years in law school. A combination of all life experiences contributes to what we bring to our work.

During your journey I hope you will find balance that will keep you healthy physically, mentally, and spiritually. If you are wise, you will place your family and core beliefs in the center. Your career requires a large segment of your time, but many have grown and achieved professionally without upsetting the needed balance. There is time for all these things if you use time properly.

Notes

1. Richard J. Herrnstein and Charles A. Murray, *The Bell Curve: Intelligence and Class Structure in American Life* (New York: Free Press, 1994), 66.
2. Daniel Goleman, *Emotional Intelligence* (New York: Bantam Books, 1995), 34.
3. Peter Ferdinand Drucker, *The Effective Executive* (New York: Harper & Row, 1967), 89.
4. Robert Bolt, *A Man for All Seasons* (New York: Random House, 1962), 81.
5. *Ensign*, December 1979, 16–18.
6. Robert Frost, *The Road Not Taken* (New York: Holt, Rinehart and Winston, 1971), 13.
7. Drucker, 74.

Elder John K. Carmack is a member of the First Quorum of the Seventy.

David and Chelom Leavitt

By Michael Mower

S m a l l T o w n s , B i g D e c i s i o n s

In 1855 territorial governor Brigham Young and other leaders decided the new capital for the Utah territory should be located somewhere in the middle of the vast Great Basin. They chose Fillmore, 200 miles south of Salt Lake City. However, after one meeting in the Millard County locale, the legislature voted to move the capital back to Salt Lake. Fillmore, they decided, was too far away, had too few residents, and was too rural.

In 1991 David and Chelom Leavitt, recent graduates of Brigham Young University Law School, moved to Fillmore for many of the same reasons early Utah lawmakers left. They felt that a small rural town would be a great place to start a law practice and raise a family. So they set up the firm Leavitt & Eastwood Leavitt in the basement of their home. Soon after, they moved their practice to an office on Main Street.

David Leavitt was no stranger to life in southern Utah. Born and raised in Cedar City, David spent his youth involved in sports, school activities, and Scouting and spent many summers and holidays working on the family ranch in Wayne County.

Chelom Eastwood Leavitt, raised in Yakima, Washington, required more of an adjustment to life in Fillmore, population 1,980. She liked the friendly,

down-home attitude of local residents, but she was surprised to learn that a quick trip to the doctor, shopping, or to a Continuing Legal Education class often meant a three-hour round-trip to Provo.

David and Chelom met in their first class on their first day of law school. David remembers hearing someone say "Chelom." Having lived in Israel, David wanted to know who was using what he thought was "shalom," the Hebrew greeting for peace. A classmate, Linda Magleby, introduced David to Chelom. They soon

began dating, and married after the end of their first year in law school.

During their second year of law school, the two paired up as moot court partners. The Leavitt's first son, Adam Eastwood Leavitt, was born during the couple's final year of law school.

After graduation, both Leavitts knew they wanted to be in court as soon as possible. Neither liked the idea of writing briefs for six years before arguing in court. That, coupled with their desire for life in a smaller town, led them to look for work



David and Chelom Leavitt at their Nephi home with their three children: (left to right) Adam, Hannah, and Danielle.

possibilities off the Wasatch Front. They learned that a contract for Fillmore City's civil work might be available. That contact became the base for their practice and the young family moved to Millard County.

Chelom said it didn't take them long to get their practice going. There were only two attorneys in Fillmore when David and Chelom arrived: the justice of the peace and the Millard County deputy attorney. They found a real need for legal help in their community. "It seemed as though every time I went to the grocery store, I was asked for legal advice," Chelom recalls.

The Leavitts divided their practice areas. Chelom handled primarily domestic relations cases. David, along with handling Fillmore City's civil work, obtained the local public defender's contract. He also handled probate and criminal defense cases.

The law partners soon learned that people in their small town had definite ideas about how a law firm should run. For example, David said that clients expected the law firm's fees to be "priced like lightbulbs at the hardware store. They wanted to know in advance what our service would cost them." The firm adapted to meet this expectation by charging set fees for legal services like drafting wills and handling divorces instead of basing fees on hourly rates.

David and Chelom also learned the small town dress code allowed them to wear casual clothes to work.

The Leavitts found a great need for pro bono work in their area. Chelom often helped women who couldn't afford divorces obtain them. David, who learned Spanish while serving a mission for the Church in New York City, assisted many poor Spanish-speaking migrant workers who needed legal help, but made too much money to be represented by Utah Legal Services.

When the Leavitts first moved to Fillmore, they planned to stay about five years. However, they both soon became deeply involved in the community. Chelom became a founding member of the Fillmore Community Theater. David was actively involved in civic and youth programs. Their children, who now include daughters Danielle and Hannah, were also happy in

Fillmore. In addition, the couple acquired an indispensable element of any small town law practice: the trust of the people of the area. The Leavitts planned to live in Fillmore forever.

Their plans, however, soon changed. A little over a year ago, David received a phone call from a Juab County commissioner asking him to apply for the position of Juab County attorney. Juab's current attorney, Donald J. Eyre, Jr., had just been appointed as a judge of the Fourth District Court. County personnel were familiar with David and his work as he had handled many cases where the Juab public defender had a conflict. David and Chelom originally decided not to apply for the position. It would entail a pay cut for their family, and they enjoyed living in Fillmore. However, after more consideration, David applied for the position and was chosen as Juab County attorney.

Upon his appointment as Juab County attorney in 1994, David gained some immediate distinction. At age 31 he became the youngest county attorney in Utah. He was also the first Republican to serve as Juab County attorney in more than 50 years. A few critics of Leavitt's appointment note that he is Governor Leavitt's younger brother and asked if this played a role in David's appointment. County personnel, however, noted that David's appointment was by unanimous vote. Even the Democrat on the county commission felt David was the best attorney for this position.

The move to Nephi from Fillmore brought a number of changes to the Leavitt family. Chelom left the full-time practice of law and now provides mediation services and takes care of their three children; David had to adjust to prosecuting alleged criminals instead of defending them. He now spends 80 percent of his time on criminal cases. The majority of his cases involve suspected drug traffickers apprehended by the Utah Highway Patrol as they cruise through Juab County on I-15. David won his first election for Juab County attorney in November 1996.

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Law School

Earns Awards at Indian Moot Court Competition

The J. Reuben Clark Law

School was recently repre-

sented in award-winning

style by two teams at the

National Indian Law Moot

Court Competition, held

February 19-22, 1997, at

the University of Wisconsin

Law School. The BYU team of Paul EchoHawk

and Timothy Reynon took fourth place overall

and received the award for the best brief. Their

first place brief will be published in the

American Indian Law Review. Paul EchoHawk

also received the Second Place Oralist Award.

Of the 10 awards given, BYU Law School team

members received three. No other school

received more than one.

BYU team-members included: Timothy

Reynon (Puyallup Indian Tribe), Paul EchoHawk

(Pawnee Tribe of Oklahoma), Melissa Flores,

and Paul MacArthur. Professors Kevin Worthen

and Larry EchoHawk served as advisors to the

students. This year's competition was the

largest ever with over 25 teams. Competition

judges included the former chief justice of the

Hawaii Supreme Court, justices from the

Wisconsin Supreme Court, and several promi-

nent state and tribal court judges.



Clark Memorandum

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