

Spring 1999

# Clark Memorandum: Spring 1999

J. Reuben Clark Law Society

J. Reuben Clark Law School

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# CM

Clark Memorandum

J. Reuben Clark

Law School

Brigham Young

University

Spring | 1999



Weightier Matters

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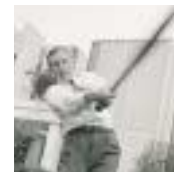
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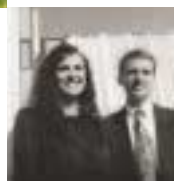
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In fulfilling its mission, the Law  
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losophy, personal example, and  
values of its namesake, J. Reuben  
Clark, Jr. Those values include  
(1) public service, (2) loyalty to  
the rule of law as exemplified  
by the United States Constitution,  
and (3) appreciation for the  
religious dimension in society  
and in a lawyer's personal life.



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A Courtroom with a View

*Joyce Janetski*





W E I G H T I E R



title and subject today

is taken from the Savior's

denunciation of the scribes and

Pharisees: "Ye pay tithe of mint and

anise and cummin, and have omitted the

*weightier matters* of the law, judgment,

mercy, and faith: these ought ye to

have done, and not to leave

the other undone"

(MATTHEW 23:23;

emphasis

added).

*by Dallin H. Oaks*

*Photos by John Snyder*

M A T T E R S

# I wish to speak about some “weightier matters” we might overlook if

we allow ourselves to focus exclusively on lesser matters. The weightier matters to which I refer are the qualities like faith and the love of God and his work that will move us strongly toward our eternal goals.

In speaking of weightier matters, I seek to contrast our ultimate goals in eternity with the mortal methods or short-term objectives we use to pursue them. I read in the *Universe* about Professor Sara Lee Gibb’s message from this pulpit last week. She discussed the difference between earthly perspectives and eternal ones. Then, on Sunday, President Thomas S. Monson reminded you that eternal life is our goal. My message concerns that same contrast, which the Apostle Paul described in these words: “We look not at the things which are seen, but at the things which are not seen: for the things which are seen are temporal; but the things which are not seen are eternal” (2 Corinthians 4:18).

If we concentrate too intently on our obvious earthly methods or objectives, we can lose sight of our eternal goals, which the apostle called “things . . . not seen.” If we do this, we can forget where we should be headed and in eternal terms go nowhere. We do not improve our position in eternity just by flying farther and faster in mortality, but only by moving knowledgeably in the right direction. As the Lord told us in modern revelation, “That which the Spirit testifies unto you . . . ye should do in all holiness of heart, walking uprightly before me, *considering the end of your salvation*” (D&C 46:7; emphasis added).

We must not confuse means and ends. The vehicle is not the destination. If we lose sight of our eternal goals, we might think the most important thing is how

fast we are moving and that any road will get us to our destination. The Apostle Paul described this attitude as “hav[ing] a zeal of God, but not according to knowledge” (Romans 10:2). Zeal is a method, not a goal. Zeal—even a zeal toward God—needs to be “according to knowledge” of God’s commandments and his plan for his children. In other words, the weightier matter of the eternal goal must not be displaced by the mortal method, however excellent in itself.

Thus far I have spoken in generalities. Now I will give three examples.

## F A M I L Y

All Latter-day Saints understand that having an eternal family is an eternal goal. Exaltation is a family matter, not possible outside the everlasting covenant of marriage, which makes possible the perpetuation of glorious family relationships. But this does not mean that everything related to mortal families is an eternal goal. There are many short-term objectives associated with families—such as family togetherness or family solidarity or love—that are methods, not the eternal goals we pursue in priority above all others. For example, family solidarity to conduct an evil enterprise is obviously no virtue. Neither is

family solidarity to conceal and perpetuate some evil practice like abuse.

The purpose of mortal families is to bring children into the world, to teach them what is right, and to prepare all family members for exaltation in eternal family relationships. The gospel plan contemplates the kind of family government, discipline, solidarity, and love that serve those ultimate goals. But even the love of family members is subject to the overriding first commandment, which is love of God (see Matthew 22:37–38) and “if ye love me, keep my commandments” (John 14:15). As Jesus taught, “He that loveth father or mother more than me is not worthy of me: and he that loveth son or daughter more than me is not worthy of me” (Matthew 10:37).

## C H O I C E O R A G E N C Y

My next example in this message on weightier matters is the role of choice or agency.

Few concepts have more potential to mislead us than the idea that choice or agency is an ultimate goal. For Latter-day Saints, this potential confusion is partly a product of the fact that moral agency—the right to choose—is a fundamental condition of mortal life. Without this precious gift of God, the purpose of mor-

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*Dallin H. Oaks is a member of the Council of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints. This devotional address was given on February 9, 1999, in the Marriott Center.*



tal life could not be realized. To secure our agency in mortality we fought a mighty contest the book of Revelation calls a “war in heaven.” This premortal contest ended with the devil and his angels being cast out of heaven and being denied the opportunity of having a body in mortal life (see Revelation 12:7–9).

But our war to secure agency was won. The test in this postwar mortal estate is not to secure choice but to use it—to choose good instead of evil so that we can achieve our eternal goals. In mortality, choice is a method, not a goal.

Of course, mortals must still resolve many questions concerning what restrictions or consequences should be placed upon choices. But those questions come under the heading of freedom, not agency. Many do not understand that important fact. For example, when I was serving here at BYU, I heard many arguments on BYU’s Honor Code or dress and grooming standards that went like this: “It is wrong for BYU to take away my free agency by forcing me to keep certain rules in order to be admitted or permitted to continue as a student.” If that silly reasoning were valid, then the Lord, who gave us our agency, took it away when he gave the Ten Commandments. We are responsible to use our agency in a world of choices. It will not do to pretend that our agency has been taken away when we are not free to exercise it without unwelcome consequences.

Because choice is a method, choices can be exercised either way on any matter, and our choices can serve any goal. Therefore, those who consider freedom of choice as a goal can easily slip into the position of trying to justify any choice that is made. “Choice” can even become a slogan to justify one particular choice. For example, in the 1990s, one who says “I am pro-choice” is clearly understood as opposing any legal restrictions upon a woman’s choice to abort a fetus at any point in her pregnancy.

More than 30 years ago, as a young law professor, I published one of the earliest articles on the legal consequences of abortion. Since that time I have been a knowledgeable observer of the national debate and the unfortunate Supreme

Court decisions on the so-called “right to abortion.” I have been fascinated with how cleverly those who sought and now defend legalized abortion on demand have moved the issue away from a debate on the moral, ethical, and medical pros and cons of legal restrictions on abortion and focused the debate on the slogan or issue of choice. The slogan or sound bite “pro-choice” has had an almost magical effect in justifying abortion and in neutralizing opposition to it.

Pro-choice slogans have been particularly seductive to Latter-day Saints because we know that moral agency, which can be described as the power of choice, is a fundamental necessity in the gospel plan. All Latter-day Saints are pro-choice according to that theological definition. But being pro-choice on the need for moral agency does not end the matter for us. Choice is a method, not the ultimate goal. We are accountable for our choices, and only righteous choices will move us toward our eternal goals.

In this effort, Latter-day Saints follow the teachings of the prophets. On this subject our prophetic guidance is clear. The Lord commanded, “Thou shalt not . . . kill, nor do anything like unto it” (D&C 59:6). The Church opposes elective abortion for personal or social convenience. Our members are taught that, subject only to some very rare exceptions, they must not submit to, perform, encourage, pay for, or arrange for an abortion. That direction tells us what we need to do on the weightier matters of the law, the choices that will move us toward eternal life.

My young brothers and sisters, in today’s world we are not true to our teachings if we are merely pro-choice. We must stand up for the *right* choice. Those who persist in refusing to think beyond slogans and sound bites like pro-choice wander from the goals they pretend to espouse and wind up giving their support to results they might not support if those results were presented without disguise.

For example, consider the uses some have made of the possible exceptions to our firm teachings against abortion. Our leaders have taught that the only possible exceptions are when the pregnancy resulted from rape or incest, or a competent physician has

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determined that the life or health of the mother is in serious jeopardy or the fetus has severe defects that will not allow the baby to survive beyond birth. But even these exceptions do not justify abortion automatically. Because abortion is a most serious matter, we are counseled that it should be considered only after the persons responsible have consulted with their bishops and received divine confirmation through prayer.

Some Latter-day Saints say they deplore abortion, but they give these exceptional circumstances as a basis for their pro-choice position that the law should allow abortion on demand in all circumstances. Such persons should face the reality that the circumstances described in these three exceptions are extremely rare. For example, conception by incest or rape—the circumstance most commonly cited by those who use exceptions to argue for abortion on demand—are involved in only a tiny minority of abortions. More than 95 percent of the millions of abortions performed each year extinguish the life of a fetus conceived by consensual relations. Thus the effect in over 95 percent of abortions is not to vindicate choice but to avoid its consequences (see Russell M. Nelson, “Reverence for Life,” *Ensign*, May 1985, pp. 11–14). Using arguments of “choice” to try to justify altering the consequences of choice is a classic case of omitting what the Savior called “the weightier matters of the law.”

A prominent basis for the secular or philosophical arguments for abortion on demand is the argument that a woman should have control over her own body. Just last week I received a letter from a thoughtful Latter-day Saint outside the United States who analyzed that argument in secular terms. Since his analysis reaches the same conclusion I have urged on religious grounds, I quote it here for the benefit of those most subject to persuasion on this basis:

*Every woman has, within the limits of nature, the right to choose what will or will not happen to her body. Every woman has, at the same time, the responsibility for the way she uses her body. If by her choice she behaves in such a way that a human fetus is*

*conceived, she has not only the right to, but also the responsibility for that fetus. If it is an unwanted pregnancy, she is not justified in ending it with the claim that it interferes with her right to choose. She herself chose what would happen to her body by risking pregnancy. She had her choice. If she has no better reason, her conscience should tell her that abortion would be a highly irresponsible choice.*

*What constitutes a good reason? Since a human fetus has intrinsic and infinite human value, the only good reason for an abortion would be the violation or deprivation of, or the threat to the woman's right to choose what will or will not happen to her body. Social, educational, financial, and personal considerations alone do not outweigh the value of the life that is in the fetus. These considerations by themselves may properly lead to the decision to place the baby for adoption after its birth, but not to end its existence in utero.*

*The woman's right to choose what will or will not happen to her body is obviously violated by rape or incest. When conception results in such a case, the woman has the moral as well as the legal right to an abortion because the condition of pregnancy is the result of someone else's irresponsibility, not hers. She does not have to take responsibility for it. To force her by law to carry the fetus to term would be a further violation of her right. She also has the right to refuse an abortion. This would give her the right to the fetus and also the responsibility for it. She could later relinquish this right and this responsibility through the process of placing the baby for adoption after it is born. Whichever way is a responsible choice.*

The man who wrote those words also applied the same reasoning to the other exceptions allowed by our doctrine—life of the mother and a baby that will not survive birth.

I conclude this discussion of choice with two more short points.

If we say we are anti-abortion in our personal life but pro-choice in public policy, we are saying that we will not use our influence to establish public policies that encourage righteous choices on matters God's servants have defined as serious sins. I urge Latter-day Saints who have

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Those who  
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taken that position to ask themselves which other grievous sins should be decriminalized or smiled on by the law on this theory that persons should not be hampered in their choices. Should we decriminalize or lighten the legal consequences of child abuse? of cruelty to animals? of pollution? of fraud? of fathers who choose to abandon their families for greater freedom or convenience?

Similarly, some reach the pro-choice position by saying we should not legislate morality. Those who take this position should realize that the law of crimes legislates nothing but morality. Should we repeal all laws with a moral basis so our government will not punish any choices some persons consider immoral? Such an action would wipe out virtually all of the laws against crimes.

#### D I V E R S I T Y

My last illustration of the bad effects of confusing means and ends, methods and goals, concerns the word *diversity*. Not many labels have produced more confused thinking in our time than this one. A respected federal judge recently commented on current changes in culture and values by observing that “a new credo in celebration of diversity seems to be emerging which proclaims, ‘Divided We Stand!’” (J. Thomas Greene, “Activist Judicial Philosophies on Trial,” *Federal Rules Decisions* 178 [1997]: 200). Even in religious terms, we sometimes hear “celebrations of diversity,” as if diversity were an ultimate goal.

The word *diversity* has legitimate uses to describe a *condition*, such as when President Bateman referred in last summer’s Annual University Conference to the “racial and cultural diversity” of BYU (Merrill J. Bateman, “Brigham Young University in the New Millennium,” *BYU 1997–98 Speeches* [Provo: BYU, 1998], p. 366). Similarly, what we now call “diversity” appears in the scriptures as a condition. This is evident wherever differences among the children of God are described, such as in the numerous scriptural references to nations, kindreds, tongues, and peoples.

In the scriptures, the objectives we are taught to pursue on the way to our eternal

goals are ideals like love and obedience. These ideals do not accept us as we are but require each of us to make changes. Jesus did not pray that his followers would be “diverse.” He prayed that they would be “one” (John 17:21–22). Modern revelation does not say, “Be diverse; and if ye are not diverse, ye are not mine.” It says, “Be one; and if ye are not one ye are not mine” (D&C 38:27).

Since diversity is a condition, a method, or a short-term objective—not an ultimate goal—whenever diversity is urged it is appropriate to ask, “What kind of diversity?” or “Diversity in what circumstance or condition?” or “Diversity in furtherance of what goal?” This is especially important in our policy debates, which should be conducted not in terms of slogans but in terms of the goals we seek and the methods or shorter-term objectives that will achieve them. Diversity for its own sake is meaningless and can clearly be shown to lead to unacceptable results. For example, if diversity is the underlying goal for a neighborhood, does this mean we should take affirmative action to assure that the neighborhood includes thieves and pedophiles, slaughterhouses and water hazards? Diversity can be a good method to achieve some long-term goal, but public policy discussions need to get beyond the slogan to identify the goal, to specify the proposed diversity, and to explain how this kind of diversity will help to achieve the agreed goal.

Our Church has an approach to the obvious cultural and ethnic diversities among our members. We teach that what unites us is far more important than what differentiates us. Consequently, our members are asked to concentrate their efforts to strengthen our unity—not to glorify our diversity. For example, our objective is not to organize local wards and branches according to differences in culture or in ethnic or national origins, although that effect is sometimes produced on a temporary basis when required because of language barriers. Instead, we teach that members of majority groupings (whatever their nature) are responsible to accept Church members of other groupings, providing full fellowship and full opportunities in Church participation. We

seek to establish a community of Saints—“one body” the Apostle Paul called it (1 Corinthians 12:13)—where everyone feels needed and wanted and where all can pursue the eternal goals we share.

Consistent with the Savior’s command to “be one,” we seek unity. On this subject President Gordon B. Hinckley has taught:

*I remember when President J. Reuben Clark, Jr., as a counselor in the First Presidency, would stand at this pulpit and plead for unity among the priesthood. I think he was not asking that we give up our individual personalities and become as robots cast from a single mold. I am confident he was not asking that we cease to think, to meditate, to ponder as individuals. I think he was telling us that if we are to assist in moving forward the work of God, we must carry in our hearts a united conviction concerning the great basic foundation stones of our faith. . . . If we are to assist in moving forward the work of God, we must carry in our hearts a united conviction that the ordinances and covenants of this work are eternal and everlasting in their consequences. [TGBH, p. 672]*

Anyone who preaches unity risks misunderstanding. The same is true of anyone who questions the goal of diversity. Such a one risks being thought intolerant. But tolerance is not jeopardized by promoting unity or by challenging diversity. Again, I quote President Hinckley:

*Each of us is an individual. Each of us is different. There must be respect for those differences. . . .*

*. . . We must work harder to build mutual respect, an attitude of forbearance, with tolerance one for another regardless of the doctrines and philosophies which we may espouse. Concerning these you and I may disagree. But we can do so with respect and civility. [TGBH, pp. 661, 665]*

President Hinckley continues:

*An article of the faith to which I subscribe states: “We claim the privilege of worshipping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship*

*how, where, or what they may” (Article of Faith 11). I hope to find myself always on the side of those defending this position. Our strength lies in our freedom to choose. There is strength even in our very diversity. But there is greater strength in the God-given mandate to each of us to work for the uplift and blessing of all His sons and daughters, regardless of their ethnic or national origin or other differences. [TGBH, p. 664]*

In short, we preach unity among the community of Saints and tolerance toward the personal differences that are inevitable in the beliefs and conduct of a diverse population. Tolerance obviously requires a noncontentious manner of relating toward one another’s differences. But tolerance does not require abandoning one’s standards or one’s opinions on political or public policy choices. Tolerance is a way of reacting to diversity, not a command to insulate it from examination.

Strong calls for diversity in the public sector sometimes have the effect of pressuring those holding majority opinions to abandon fundamental values to accommodate the diverse positions of those in the minority. Usually this does not substitute a minority value for a majority one. Rather, it seeks to achieve “diversity” by abandoning the official value position altogether, so that no one’s value will be contradicted by an official or semiofficial position. The result of this abandonment is not a diversity of values but an official anarchy of values. I believe this is an example of BYU visiting professor Louis Pojman’s observation in a recent *Universe Viewpoint* (October 13, 1998, p. 4) that diversity can be used “as a euphemism for moral relativism.”

There are hundreds of examples of this, where achieving the goal of diversity results in the anarchy of values we call moral relativism. These examples include such varied proposals as forbidding the public schools to teach the wrongfulness of certain behavior or the rightfulness of patriotism and includes attempting to banish a representation of the Ten Commandments from any public buildings.

In a day when prominent thinkers like James Billington and Allan Bloom

have decried the fact that our universities have stopped teaching right and wrong, we are grateful for the countercultural position we enjoy at BYU. Moral relativism, which is said to be the dominant force in American universities, has no legitimate place at Brigham Young University. Our faculty teach values—the right and wrong taught in the gospel of Jesus Christ—and students come to BYU for that teaching.

In conclusion, diversity and choice are not the weightier matters of the law. The weightier matters that move us toward our goals of eternal life are love of God, obedience to his commandments, and unity in accomplishing the work of his Church. In this belief and practice we move against the powerful modern tides running toward individualism and tolerance rather than toward obedience and cooperative action. Though our belief and practice is unpopular, it is right, and it does not require the blind obedience or the stifling uniformity its critics charge. If we are united on our eternal goal and united on the inspired principles that will get us there, we can be diverse on individual efforts in support of our goals and consistent with those principles.

We know that the work of God cannot be done without unity and cooperative action. We also know that the children of God cannot be exalted as single individuals. Neither a man nor a woman can be exalted in the celestial kingdom unless both unite in the unselfishness of the everlasting covenant of marriage and unless both choose to keep the commandments and honor the covenants of that united state.

I testify of Jesus Christ, our Savior. As the One whose atonement paid the incomprehensible price for our sins, he is the One who can prescribe the conditions for our salvation. He has commanded us to keep his commandments (see John 14:15) and to “be one” (D&C 38:27). I pray that we will make the wise choices to keep the commandments and to seek the unity that will move us toward our ultimate goal, “eternal life, which gift is the greatest of all the gifts of God” (D&C 14:7). I say this in the name of Jesus Christ. Amen.

*We move  
against the  
powerful modern  
tides running  
toward indi-  
vidualism and  
tolerance rather  
than toward  
obedience and  
cooperative  
action.*



# the People

## Article I

the constitutional  
thought of  
j. reuben clark, jr.

*by J. David Gowdy*

This address was  
given at the  
Dallas/Fort Worth  
Chapter of the  
J. Reuben Clark  
Law Society  
on February 16, 1999.



F. Wagner '14  
Reforma 336  
Mexico

**I**N JULY 1935, J. REUBEN CLARK, JR., SPOKE at a luncheon at the California Club on the subject of the Constitution and said in part:

*We are deaf today to the approach of tyranny because we have lived so long under the protection of the Constitution that we take for granted the blessings of liberty. . . . We need more people today with strong convictions in support of the Constitution and with courage to back their convictions. [J. Reuben Clark, Jr., *Stand Fast by Our Constitution* (Salt Lake City: Deseret Book Company, 1973), p. 4 (cited herein as “Clark”)]*

One of the fundamental purposes of the J. Reuben Clark Law Society is to emphasize “loyalty to the rule of law and to the Constitution of the United States.”

*“From the time I stood at my mother’s knee, I have been taught to reverence the Constitution as God-given.”*

Since the substance and meaning of the Constitution has of late been such an important subject in our national discourse and in the minds of many Americans, it seems appropriate for us to focus our attention upon the constitutional thought of that great statesman for whom our society is named: J. Reuben Clark, Jr.

J. Reuben Clark, Jr., was the first native Utahn to receive national and international acclaim for his legal and diplomatic skills. Dallin H. Oaks described J. Reuben Clark as “a widely acclaimed authority in international and constitutional law, and a distinguished public servant,” and said, “His coherent philosophy of law and government was born of brilliance and nurtured by superior education, experience, love of country, and devotion to God” (address to J. Reuben Clark Law School, 1973).

Joshua Reuben Clark, Jr., was born on September 1, 1871, in Grantsville, Utah, to Joshua Reuben Clark and Mary Louisa Woolley Clark. He graduated as valedictorian in the first class at the University of Utah in 1898 and married Luacine Annetta Savage in September of that year. They became the parents of three daughters and one son. In 1903 Clark moved his family to New York City to attend the law school at Columbia

University, where he graduated with an LLB degree in 1906. He excelled in law school and was elected to the editorial board of the *Columbia Law Review*. During his public career from 1906 to 1933, Clark served as assistant solicitor, solicitor, and undersecretary of the U.S. State Department, taught as an assistant professor of law at George Washington University, and crowned his public career by serving as U.S. ambassador to Mexico. It was during his service as undersecretary of the State Department that he published his influential “Clark Memorandum on the Monroe Doctrine” (after which our society’s publication is named). From 1933 on he served for 28 years as a member of the First Presidency of The Church of Jesus Christ of Latter-day Saints until his passing on October 6, 1961.

I have divided the constitutional thought of J. Reuben Clark into two categories: (1) his thoughts on the fundamental principles upon which the Constitution is based and (2) his thoughts on the importance of individual vigilance in understanding and upholding the Constitution in our day. As a further preface to these remarks, please note that this is a brief summary of his thoughts on the subject only and is not intended to be comprehensive in nature. Next, I believe it is important to understand the context in which he viewed this great document. J. Reuben Clark declared, “[T]he Constitution of the United States is a great and treasured part of my religion” (Clark, p. 7). It was his firm belief that the Constitution was indeed inspired by the hand of Providence. He told a group of bankers in 1938: “From the time I stood at my mother’s knee, I have been taught to reverence the Constitution as God-given” (Martin B. Hickman, “J. Reuben Clark, Jr.: The Great Fundamentals,” *BYU Studies* 13, no. 3 [1973], p. 257 [cited herein as “Hickman”]). He was also a devoted and lifelong student of history and of the roots of the American founding. With particularity he studied the Roman legal system and its progeny. From this background he viewed the Constitution “as emerging from a long his-

torical process. . . . [and saw] the framers of the Constitution as being men of great historical knowledge as well as practical experience.” He said:

*The Framers of our Constitution . . . were trained and experienced in the Common Law. They remembered the barons and King John at Runnymede. They were thoroughly indoctrinated in the principle that true sovereignty rested in the people. . . . Deeply read in history, steeped in the lore of the past in human government, and experienced in the approaches of despotism which they had, themselves, suffered at the hands of George the Third, these patriots, assembled in solemn convention, planned for the establishment of a government that would ensure to them the blessings they described in the Preamble. [Clark, p. 145, 147]*

Yes, he revered the Framers and, describing them, said, “As giants to pygmies are they when placed alongside our political emigrés and fellow travelers of today, who now traduce them with slighting work and contemptuous phrase” (Clark, pp. 135–36).

### Fundamental Principles of the Constitution

J. Reuben Clark firmly believed that the cornerstone of limited government under the Constitution lies in its provision for the separation of powers. He believed, with Locke and Montesquieu, that “a combination of legislative, executive and judicial power in one person or body was destructive of all freedom and justice” and that this fact was key in the founders’ minds in providing in the Constitution for a “government in which these three branches were distinct and wholly independent the one from the other” (Hickman, p. 263). Clark stated:

*It is this union of independence and dependence of these branches—legislative, executive and judicial—and of the governmental functions possessed by each of them, that constitutes the marvelous genius of this unrivaled document. The Framers had no direct guide in this work, no historical governmental precedent upon which to rely. As I see it,*





The Clark family gathers for a photograph on July 24, 1892. Standing (from left) are Esther, Elmer, Reuben (J. Reuben Clark, Jr.), Edwin, and Frank. Seated (from left) are Mary Louisa Woolley Clark, John (on lap), Samuel, Alice, Joshua Reuben Clark, Sr., and Lucille.



Lucine Annetta Savage Clark wears her wedding gown as she poses in the studio of her father, C. R. Savage, Utah's foremost early photographer.

*it was here that the divine inspiration came. It was truly a miracle.* [Hickman, p. 265]

His understanding of this basic framework of the Constitution led him to make special efforts “to call attention to the dangers involved in permitting either of the three branches of government to usurp powers that did not rightfully belong to them” (Id.). These efforts included his opposition to congressional subservience to presidential demands and to presidential usurpation of congressional prerogatives. With respect to the first issue, “congressional subservience to presidential demands,” he set forth what he believed to be usurpation by presidents of the legislative power. He stated:

*We the people provided in our Constitution that the President should report the State of the Union to Congress and recommend legis-*

*lation. But there is growing up the custom for the chief executive not only to recommend legislation, but actually to draft it, and submit it to his favorites in Congress to secure its passage. The administration support in Congress takes the bill and makes every effort to pass it. . . . While in [Roman] days men were executed as traitors for not going along with the program, in our days, political vengeance is visited, either by denying patronage, or by social ostracism, or by active opposition at the polls against recalcitrant lawmakers.* [Clark, p. 153]

With respect to the latter, “presidential usurpation of congressional prerogatives,” he spoke out on the issue of the president’s right, as commander in chief, to act in times of war—and “he argued that the plain words of the Constitution granted war powers specifically to Congress” (Id.). Although he agreed that the president



Ambassador J. Reuben Clark, Jr., sits at his desk at the U.S. Embassy in Mexico City, September 1, 1931.

could act to repel an invasion, he warned of the growing excesses in presidential power to conduct a war without congressional authority (note that this was in the pre-Vietnam War era). He asserted that:

*[T]his authority and these powers are to be measured exclusively by the express statutory enactments of the Congress, passed pursuant to and in virtue of the duty and powers of Congress to provide for the waging of war by the United States as specifically authorized by Constitutional provision. They are not to be considered as growing out of, or in any necessary way, concerned with, related to, or enlarged by his powers as Commander in Chief. [Clark, p. 156]*

Finally, on the same premise, President Clark warned of the “growing tendency for our Congress to turn over to administrative commissions the power to make laws. This plan carries the innocent description of making regulations to enforce the laws. But lawyers know that under the guise of issu-

ing regulations, these administrative bodies really legislate, not only in procedural matter, but in substantive matters” (Clark, p. 151).

In describing the concept of federalism inherent in the Constitution, J. Reuben Clark emphasized that there is a dual jurisdiction in our constitutional form of government—state and federal. He felt strongly that a limited federal government is what the Founding Fathers clearly intended in the Constitution and that “local government governs best.” He said:

*The Federal Government may only do what we the people have authority to do; if it does more it is guilty of usurpation. The people have reserved to themselves or to their State governments every right and power they have not delegated to the Federal Government, which must always look to the Constitution and its amendments to find its rights, for it has none other. This system puts the great bulk of our daily life activities in the hands of our own neighbors who know us and our surroundings, and not in the*

*hands of a bureaucrat in a far-away national capitol, who, to all intents and purposes, is an alien to us and our affairs. This plan gives the largest possible measure to local self-government controlling and directing matters pertaining to our personal liberties and to the security of our private property; it will not abide with us if we lose our local self-government. [Clark, pp. 187–88]*

Another key feature of the Constitution important to J. Reuben Clark was the Bill of Rights—particularly the First Amendment. He observed that “the greatest struggle that now rocks the whole earth more and more takes on the character of a struggle of the individual versus the state” (Hickman, p. 268). In this regard “he was particularly concerned with the protection of the freedoms guaranteed by the First Amendment: freedom of the press, of speech, and of religion” (Id.). His firm

opinion was that “[t]he fathers felt that when they protected freedom of speech and of the press against government interference, they had effectively guaranteed the citizens freedom to talk and write as they felt and thought about their own government” (Id., p. 269), and that this was essential to a free society.

With respect to freedom of religion, J. Reuben Clark revered the soul of man as “the holy of holies” (Id.).

*He was outraged that the state should intrude onto such sacred ground and there seek to dethrone God and exalt the state into God’s place. [He stated:] “This is the archest treason of them all. For man robbed of God becomes a brute.” President Clark was explicit in his belief that for gov-*

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J. Reuben Clark, Jr., pauses for a group picture in Toluca, Mexico, September 14, 1931, while serving as U.S. ambassador.

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*ernment to trespass on the religious life of its citizens was a sin of highest magnitude. “This sin must be felt, not told, for words cannot measure the height and breadth of this iniquity.” [Id., pp. 269–70]*

His conviction, no doubt, was born of the memory of the trials, persecution, and suffering of the Mormon people. In an April conference of the Church in 1935, he stated that nothing was so important to this people as “this guarantee of religious freedom, because underneath and behind all that lies in our lives, all that we do in our lives, is our religion, our worship, our belief and faith in God” (Id., p. 270).

### The Importance of Individual Vigilance in Understanding and Upholding the Constitution

J. Reuben Clark, Jr., continually stressed the need for all American citizens (and particularly Church members) to “constantly review the purposes for which the Constitution was written” (Id., p. 271). He taught that our patriotic allegiance should not run to individuals or government offi-

cials, “no matter how great or small they may be,” but that the only allegiance we owe as citizens runs to our Constitution. He stated that “[t]his principle of allegiance to the Constitution is basic to our freedom” (Clark, p. 189). He decried “those who . . . are incapable of understanding or appreciating the fundamentals of, or to think practically and creatively about, the problems of free self-government.” He expressed the conviction that “those who understand the spirit as well as the word of the Constitution will be able . . . to preserve its great principles and the republican form of government for which it provides” (Clark, p. 158).



In regard to the founding documents with which every citizen should be familiar and conversant, J. Reuben Clark was a diligent student of the history of the founding and particularly of the Federalist Papers. He made the statement (in agreement with Thomas Jefferson) that “[t]hese essays have been appraised as ‘the greatest treatise on government that has ever been written,’ and its writers have been ranked as of the same order with Aristotle, Montesquieu, and Locke” (Id., p. 135). He quoted Fiske stating that “for all posterity the ‘Federalist’ must remain the most authoritative commentary upon the Constitution that can be found” (Id., p. 167). He also loved George Washington’s poignant farewell address, describing it as a “prophetic admonition and warning.” He frequently quoted excerpts from the address when writing or speaking on the meaning of the Constitution and earnestly recommended to his listeners “to read it in its entirety.”

J. Reuben Clark acknowledged the great price paid by so many to both deliver and redeem this nation and to uphold our precious liberty in subsequent wars. He minced no words in his call to each citizen to remember those sacrifices in order to appreciate and uphold our constitutional freedoms when he stated:

*I say to you that the price of liberty is and always has been, blood, human blood, and if our liberties are lost, we shall never regain them except at the price of blood. [Clark, p. 137]*

Finally, in connection with constitutional learning and vigilance, he vigorously urged each citizen to be watchful and to discern gradual encroachments to our liberties under the Constitution. James Madison stated: “I believe that there are more instances of the abridgment of the freedom of the people by gradual and silent encroachment of those in power than by violent and sudden usurpations.” In this regard J. Reuben Clark said:

*[I]n the whole history of the human race, from Adam until now, Tyranny has never come to live with any people with a placard on his breast bearing his name. He always comes in deep disguise, sometimes proclaiming an endowment of freedom [or rights], sometimes promising to help the unfortunate and downtrodden, not by creating something for those who do not have, but by robbing those who have. But Tyranny is always a wolf in sheep’s clothing, and he always ends by devouring the whole flock, saving none. [Clark, p. 5]*

I don’t think that his message to us would be any different if he were here today.

In conclusion, I hope that each of us may learn from the words and example of our society’s namesake and that we, as members of the J. Reuben Clark Law Society, may be found to be both loyal to the Constitution and courageously standing up in defense of the divine principles upon which it is based.

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Photo on page 11 courtesy of Photographic Archives, Harold B. Lee Library, Brigham Young University, Provo, Utah.





*by* JOYCE JANETSKI

ILLUSTRATION *by* CRAIG FRAZIER

PHOTOS *by* JOHN SNYDER

C O U R T R O O M

W I T H A V I E W

# ONE OF THE GREATEST

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## OPPORTUNITIES A LAW SCHOOL

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### GRADUATE CAN HAVE IS THE CHANCE TO SERVE

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as a clerk for a United States Supreme Court justice. Although a clerkship in any court—federal or state, appellate or trial—is a powerful learning experience, a perspective on judicial decision making sharpened at the Supreme Court level cannot be compared. “Clerkships of all kinds . . . expose young lawyers to challenging legal problems and provide a window into our legal system that can be obtained in no other way,” says David Campbell, visiting professor at the BYU Law School. “[But] as a federal clerk,” he adds, “you get to see the world from the mountaintop.”

#### JUDGED AN HONOR

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Just like the few who make it to the highest summit, a Supreme Court clerk enjoys an opportunity that is not only great but also rare. The competition is plenty tough for the few clerkship slots at the top of our judicial system. The honor is defined by the statistics: approximately 40,000 students will graduate from American law schools each year; only about 25 to 30 of them will obtain clerkships at the Supreme Court level.

Yet since its first graduating class in 1976, the J. Reuben Clark Law School has produced nine graduates who have earned the distinction of being selected to serve as a judicial clerk for the high Court. This number places the Law School in the small percentage of law schools who can boast such a high representation. “The overwhelming number of Supreme Court clerks have come from a few of the nation’s elite law schools,” notes Douglas Floyd, law professor and member of the faculty judicial-clerkship committee. “The achievement of nine BYU graduates in attaining these positions has been quite

remarkable, given the relatively recent founding of the BYU Law School.”

No one knows better how difficult it is to be chosen for the honor than those who have been. “It’s so hard to get one,” says Jay Jorgensen, who will start his clerkship this fall. “I was so surprised when Chief Justice Rehnquist’s secretary called. I was flabbergasted.” Steve Sargent, who five years ago also clerked for the chief justice, recalls, “I just assumed that ‘no news was bad news’ when I hadn’t received any word from Chief Justice Rehnquist. Then when his secretary called and told me I had been selected, I couldn’t believe it.”

Several of the JRCLS Supreme Court clerks testify that—aside from being qualified to compete—it was just chance that got them the position. As Von Keetch thinks back on his 1989 Term in the courtroom of Justice Antonin Scalia and Chief Justice Warren E. Burger, he admits,

*One factor above any other that applies to the selection process is pure luck. That’s not to say that qualifications aren’t important. To the contrary, applying from a law school other than Harvard, Yale, Chicago, or Stanford, it is almost a prerequisite that one finish in the top one or two in his or her class. . . . But as I looked over the résumés of those who applied for clerkships while I was at the Court, I literally found hundreds of applicants who had those qualifications. [Much] is just a product of darn good luck.*

Even the Law School’s first Supreme Court clerk, Monte Stewart, responds to the question of selection criteria with a pause followed by a common conclusion: “Luck?”

But, as Keetch points out and as every law student knows, it takes *more* than luck to become a Supreme Court clerk. The qualifications are the highest: a lofty class

rank, law review editorial experience, a clerkship with perhaps a “feeder” federal appellate court, and, hopefully, some legal practice. The competition is the stiffest: the best law students from the most prestigious law schools. “Other clerks had graduated at the top of their classes from Harvard, Yale, and Stanford. . . . There is a certain mystique about the legal education at these schools,” says Keetch. When Stewart showed up for his clerkship, he greeted two Harvard grads and a southerner from the University of Virginia. “I was the Mormon from Las Vegas,” he relates.

Though most of the clerks confess they were a bit nervous during their first few summer days in Washington, they quickly put things in perspective. “When I first arrived at the Court, I must admit to having felt extremely intimidated,” says Keetch.

*I feared that it would be obvious just how far behind I was. The other clerks, however, couldn't have been better. From the start they treated me as an equal. During the time I was at the Court, I never felt from them a sense of superiority, nor did I see any other indication that they were “looking down their noses” at a BYU graduate. They knew and respected Rex Lee and other professors at BYU, and more than anything else, they repeated their amazement at my having received an excellent legal education without having to incur the large debt that they all carried.*

Stewart agrees. “I felt that the liberal education I got here was as good as the education that any of the other Supreme Court clerks had received,” he says. “I basically had access to the same cases and casebooks and the same law review articles. And my teachers in my estimation were as good as those these other clerks had had, although my teachers probably were not as well known nationally. There’s no question in my mind . . . that in some cases they were better than the more-famous teachers found at other prominent law schools.”

Michael Mosman, who clerked for Justice Lewis F. Powell, Jr., during the 1985–86 Term, also felt well prepared for his clerkship by his law training at the Law School, “particularly Woody Deem’s criminal law and procedure classes and Doug

## Monte N. Stewart, '76

When Rex Lee and Bruce Hafen were scouting for outstanding individuals they wanted at BYU’s new law school, people who would inspire others to come, they looked to Monte Stewart to boost their student recruitment. “Stewart’s decision to join the charter law class at BYU influenced a number of his classmates to do the same,” notes Carl Hawkins. When it came time after his graduation from law school for Stewart to

### MORE THAN LUCK

seek a judicial clerkship in the Supreme Court, the leaders of the Law School remembered Stewart, who recalls, “A lot of people supported me, and Rex, obviously, was at the center of that.”

Another person who spoke highly of Stewart was Judge J. Clifford Wallace of the Ninth Circuit Court of Appeals in San Diego, for whom Stewart clerked after his graduation from law school. When Chief Justice Warren Burger

called on the judge to see what kind of clerk Stewart had been, Wallace “went to bat” for the young lawyer. Two weeks later, Stewart learned he had been selected for a Supreme Court clerkship.

Stewart began his clerkship with Chief Justice Burger the summer of 1977. “I was of the view then—and still am,” Stewart says, “that there were many clerks with a whole lot more candlepower than I had, but I believe I had enough candlepower that I felt that I did well as a law clerk. I know that Chief Justice Burger was pleased with my performance.” Likewise, Stewart took a good view of the chief justice. “I was impressed with Chief Justice Burger’s wisdom and instincts,” he says. “I



gained an appreciation for the sincerity of the justices in striving to do the right thing and make the right decision in very difficult and challenging cases.”

When his year at the Supreme Court was up, Stewart returned to San Diego to practice with Gibson, Dunn & Grutcher, the law firm that had originally hired him out of law school. Two and a half years later he moved with his growing family to his hometown of Las Vegas to join his uncle’s firm, Heaton & Wright. When his uncle died in October of 1982, Stewart formed his own firm—Wright, Shinehouse & Stewart—a successful civil practice for which he worked for more than 10 years.

But in 1991 Stewart shifted gears, accepting an appointment to serve as a United States attorney in Nevada for 18 months. Then in June 1995 he interrupted his law career to serve as mission president in the Georgia Atlanta Mission for three years.

Stewart and his wife, Ann, eventually moved their family, which includes seven sons and three daughters (in that order), to Provo. Now on the Law School’s faculty, he serves as director of the Advocacy Program, focusing on the legal research, analysis, writing, and oral advocacy skills of first-year law students. Stewart remains of counsel to his previous employer, the Provo law firm Fillmore, Belliston & Israelsen.



## Eric G. Andersen, '77

Fasting, prayer, and the advice of friends and mentors helped Eric Andersen make “the better choice . . . between studying law and pursuing a PhD in history.” Prompted particularly by then Law School professor Bruce Hafen, Andersen says, “I was intrigued by the adventure of being in the second class of the new law school at BYU and, after considering enrolling at a few other fine schools, felt that BYU was where I belonged.”

The road that led Andersen to a judicial clerkship with Justice Lewis F. Powell, Jr., in 1978 and a satisfying career has been paved with high opinions of the young lawyer. Not only Hafen but also then BYU President Dallin H. Oaks brought Andersen to the attention of Justice Powell. And his clerkship with Powell, Andersen claims, was “the single most important thing for getting a job teaching.”

Following his graduation from law school, Andersen and his wife, Catherine (Hardy), a member of the Law School’s charter class, whom he had married right after her graduation, moved to San Diego, California, for a clerkship with Judge J. Clifford Wallace of the United States Court of Appeals for the Ninth Circuit. The next year they moved to Washington, D.C., to clerk for Justice Powell.

### FREE AGENT

“Other law-related experiences—both in practice and teaching—have been of great value,”

Andersen says, “but the concentration of learning was greater during the Supreme Court clerkship than at any other time in my professional life.”

Immediately after his clerkship Andersen spent a year working in the Washington, D.C., office of Vinson & Elkins, a Houston-based firm. When the firm had an opening in its London office, Andersen and his wife moved to England, where they lived for the next four years.

In 1984 Andersen left London to accept a teaching position on the faculty at the University of Iowa College of Law in Iowa City. “After a while we knew we’d have to make the jump sometime from practice to teaching, so we couldn’t get too used to the lifestyle and salary of practicing.” He has been on the faculty ever since and is currently devoting half of his university time as associate academic dean of the law school.

With two of their children in college (one at BYU, the other at BYU—Hawaii) and the third in junior high school, Andersen and his wife are finding a *little more* time for themselves. Yet even their getaway of driving four hours to the Chicago Illinois Temple is within the context of responsibilities shaped by the Church. Andersen admits that his life’s choices may seem “boring” in comparison to those who live a bit closer to the edge, but that’s the way he likes it.



Floyd's class on federal courts." He relates, "I went to both my clerkships really concerned about how a BYU graduate would stack up against graduates of the best schools in the country. I felt that the training I had at BYU prepared me to go toe-to-toe with those people. . . . I didn't feel shorted."

Denise Lindberg, who clerked for Justice Sandra Day O'Connor during the 1990–91 Term, agrees that she felt just as prepared as clerks from the Ivy League schools but adds that she and other clerks from "second-tier" schools felt "more keenly the need to prove [them]selves as individuals and as representatives of [their] schools."

Though all nine Law School grads felt they had the "right stuff" for their clerkships, they admitted it helped to have someone help them get their foot in the door of the courtroom. Keetch concurs that "the strongest factor over which the applicant has some control is references." When choosing clerks, "justices rely a great deal on those whom they know and respect throughout the legal community of lawyers, judges, and educators." He finds that it helps to find someone such as "a former clerk, a professor, or a judge who knows one or more of the justices and to cultivate a sterling recommendation from that person."

Perhaps the best-known advocate for law grads was Rex E. Lee, founding dean of the Law School and president of Brigham Young University prior to his death in 1996. It is no coincidence that Lee also served a Supreme Court clerkship (for Justice Byron White) after graduating first in his class from the University of Chicago Law School in 1963. Well known for personally recruiting a strong group of law faculty and students at the Law School's inception, Rex Lee saw to it that this strength would carry on after, and far beyond, those first commencement exercises. Through his own reputation and power to persuade, Lee—who during his life argued nearly 60 cases before the

Supreme Court—literally opened doors for promising young lawyers.

Eight of the nine BYU law grads point to Lee as a key factor in obtaining their Supreme Court clerkships. Jorgensen, the ninth and most recent clerk, was recommended for his 1999 clerkship by several Law School professors but still recognizes the impact of Lee. "Part of the reason I chose to attend the J. Reuben Clark Law School," he says, "is a professor I knew at the Law School—Rex Lee."

Like the other clerks, Jorgensen can thank many of his Law School professors for their support. Richard Wilkins, Gerald Williams, and Kevin Worthen sent

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recommendations to the justices in his behalf, although Jorgensen is sure that as they were writing letters to the justices, "they were thinking I didn't have a chance." Karl Tilleman, who served for the retired Chief Justice Warren E. Burger and for Justice Clarence Thomas during the 1992 Term, recalls that Tim Flanigan and Rex Lee were influential in his securing a Supreme Court clerkship.

Eric Andersen, a clerk for Justice Powell during the 1978–79 Term, credits a BYU president for his opportunity. "The 'qualification' that made the difference was the outstanding support I received from faculty and administrators, including then BYU president Dallin H. Oaks (who had ties with Powell). . . . I owe them an enormous debt."

Besides professors and administrators, judges have a strong influence on the selection of Supreme Court clerks. Andersen notes that "part of the reason he received the clerkship was Justice Powell's personal 'affirmative action' policy in recruiting clerks. Powell generally secured three clerks from the more prestigious law schools, and then he would be 'willing to go with a lesser-known school.' The justice would go out of his way to give the top students of lesser-known schools a chance for a clerkship."

With a similar appreciation, Stewart says that Chief Justice Burger broadened his field of vision when looking for good clerks. "He was not an elitist, evidenced by the fact that he took as a law clerk someone who was from a brand-new law school. It was not uncommon for him to take law clerks from the less well known law schools, whereas some of the justices tended to hire their law clerks from only a handful of four or five of the most prestigious law schools in the country." Stewart also notes that Justice Powell—though he had declined him a clerkship—"told the chief some very favorable things about me" and that Judge Wallace, for whom Stewart had previously clerked, also "went to bat for me."

Sargent credits a recommendation from Judge Deanell Reece Tacha of the Tenth Circuit, for whom he had clerked in 1993, in getting him a clerk position with Chief Justice Rehnquist the following year.

Mosman recounts that he "had three main qualifications: (1) Judge Malcolm Wilkey recommended me, (2) Judge Malcolm Wilkey recommended me, and (3) Judge Malcolm Wilkey recommended me."

#### OPENING EYES

The true value of a clerkship lies not so much in the honor of the position but in how it will enlighten the lawyer in becoming a better person. When he contemplated a judicial clerkship, David Campbell asked himself, "Will this be a valuable way to spend my time?"—a far

superior question, he believed, than “Will this experience be a stepping-stone in my career?” or even “Will I be a better lawyer for having had this experience?” (The value of a Supreme Court clerkship is certainly not found in any immediate financial rewards. Clerks are paid less than a new associate at a law firm—about \$38,600 for an average starting salary, compared to \$110,000-plus at a firm.)

Once a judge has chosen a law graduate for his clerk, he will greatly define the value of that clerk’s experience. Elder Dallin H. Oaks, a former justice of the Utah Supreme Court, stated: “The most important thing in dictating the quality of a clerkship is not whether the court is state or federal but the quality of the judge and the way he or she uses law clerks.” Once a judge has opened the door for a young lawyer, he can help open their eyes to the value of the law and to their potential to use the law for the benefit of the human race and the world it touches.

The nine Law School clerks agree. Von Keetch says, “Justice Scalia taught me to question everything. . . . Case law and precedent . . . are only as strong as the reasoning upon which they are based. . . . Despite a résumé that contains the highest honors that the legal profession can bestow, he was always searching for new viewpoints and concepts that could be utilized to get the very best out of the law. [He taught me that] we do not exist as servants to the law; the law exists as a servant to us.”

#### JUDGE AS LAW MENTOR

As a member of a select group comprising a chief justice and eight associate justices, a Supreme Court judge is in charge of reviewing 140 to 150 cases a term—the hardest cases, those that could not be settled in lower courts. The highest of appellate courts sees lawsuits that have already been through much debate and judgment and that are making their final appeal before some of the most discriminating minds in the nation.

As an expert in discernment, a Supreme Court judge functions as a mentor to the clerk who wants to learn the law and then apply it wisely to individual situations. Those serving clerkships find that the judge serves as a model for decision making. They also come to realize that the judge is *where* he is because of this ability.

As a law review article by Rex Lee and Richard Wilkins states: “The judge has the ancient task of settling disputes between specific individuals, groups, or institutions. [A] judge must interpret the laws passed by the legislature and the regulations issued by executive agencies and monitor the conduct of government agen-

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cies, public institutions, and even private individuals and groups in light of the Constitution.” To this purpose Denise Lindberg adds, “Justice O’Connor taught me the importance of having thought through the issues carefully—not just in the present context but in thinking about the ramifications of a proposed decision in other contexts.”

“The quality of a judge refers largely to the quality of the judge’s decisions,” notes Judge Larry M. Boyle, former member of the Idaho Supreme Court and present U.S. magistrate judge for Idaho. “The ‘correctness’ of the decision is only one consideration because many judicial decisions involve issues that could be decided in

several different ways. As a result, attributes such as whether the judge is scholarly in his or her approach to the law as well as fair, impartial, unbiased, thoughtful, and wise in properly assessing the conflicting legal, equitable, and policy considerations at issue in a case are at the heart of assessing the quality of a judge’s decisions and the value of a clerkship with that judge.” The clerks all concur that the quality of their judge’s decisions was high and, consequently, was one of the main rewards of their experience.

Rex Lee quoted Leon Friedman to express his view that “Justice White ‘approaches each case without preconceived ideas and with a desire to examine the individual problem in that case rather than deducting the result from set principles. His approach . . . makes for greater justice in the cases coming before our highest Court.’” Kevin Worthen sees in White a “thirst for knowledge and a great capacity to assimilate and analyze information.” In a law review tribute to the chief justice, he quotes one of White’s former law partners referring to the man as “the only lawyer he ever knew who physically attacked a library” and another describing him as “a fierce worker who advanced on a problem, shredded it, and put it together again.”

Though they saw at the time that their research, writing, and debating had some impact on the judge’s decisions, the clerks knew that, as Von Keetch says, “the justices—and the justices alone—made the ultimate decision on how a case would be decided.” He relates, “Justice Scalia’s writings are truly Justice Scalia’s writings. . . . He would always take whatever rough draft he received, improve upon it dramatically, and, through additional arguments and reasoning, make it his own.”

Other clerks agree with Keetch. Monte Stewart says, “In my experience Chief Justice Burger knew how he wanted to rule on all the court matters, [though] the chief’s law clerks had the responsibility to make a statement of the judge’s view.” Eric Andersen relates that “Justice Powell . . .

## Kevin J. Worthen, '82



STILL ENJOYING THE VIEW

As Kevin Worthen looks out the window of his fifth-floor office in the Law School building at BYU, he sees more than mountains: he enjoys a clear vision of the power and potential of the law. In his role of law professor, he hopes to clarify that vision to new generations of lawyers. "I want every law student to gain a thorough understanding of how the law develops from and impacts the society in which we live," Worthen says. "Such an understanding inevitably generates passionate enthusiasm for participation in the legal process and a keen appreciation of the enormous responsibility that accompanies that participation. It is what makes a life in the law so rewarding and so challenging."

Perhaps the main thing that convinced Worthen that he wanted to teach law rather than practice it was his clerkship with Justice Byron White during the 1983–84 Term. "I found that I enjoyed discussing and debating the law and what it can and should do. After my clerkship I could continue to approach law this way through teaching."

In addition to his desire to teach law, Worthen developed a particular interest in Indian law during his Supreme Court clerkship, a period of time when several Indian lawsuits reached the high Court. Previously at the Law School he had taken an Indian law course and found the field "sort of an uncharted area of law . . . with few court decisions, [yet one] about Constitutional issues." Following his clerkship he headed southwest to Phoenix, where the practice of Indian and environmental law flourishes. There he became an associate in the natural resources department of the Jennings, Stouss & Salmon firm, where he split his time three ways between Indian law, appellate courts, and environmental law.

Worthen's desire to teach, however, drew him back to BYU, where he joined the Law School faculty in 1987. He often draws from his experience clerking for Judge Malcolm R. Wilkey of the United States Court of Appeals for the D. C. Circuit, as well as from his clerkship with Justice White—not only as a teacher but also as a judicial clerkship coordinator for the Law School. He is a strong advocate of the clerkship experience and the opportunity it offers to "take part in an invaluable mentoring process" with a judge. He asserts, "Students can't get that kind of insight anywhere else."

Worthen, who went to the College of Eastern Utah in Price, "just a few blocks from [his] home," before coming to BYU for undergraduate and law degrees, has an older brother, Clyde, who is also a graduate of the J. Reuben Clark Law School. Worthen and his wife, Peggy, wonder if any of their three children—Collin, 13; Aaron, 11; or Kaylee, 7—will someday be enjoying the same view from that Law School window.



## Michael Mosman, '84

**A** look at Michael Mosman's pedigree might lead one to think that he lives and breathes the law. His father and two brothers practice law together in Moscow, Idaho. His great-grandfather was a lawyer in Virginia until he left to become the only lawyer in Cul-de-Sac, Idaho. Even Mosman's brother-in-law is in law. But those acquainted with Mosman and his sense of humor and zest for things nonlegal know that he frequently comes up for fresh air.

Before serving a clerkship with Justice Lewis F. Powell, Jr., during the 1985 Term, Mosman cruised through his undergraduate years at Ricks College and Utah State University, then looked at BYU's Law School. "I did not plan my education or my career—which explains why I went to law school," he says. "I chose the J. Reuben Clark Law School for three reasons: (1) I thought my education would be a unique blend of legal training and gospel influence, (2) I was offered a scholarship, and (3) I wanted to live in the Mountain West for as much of my life as possible."

### AIR APPARENT

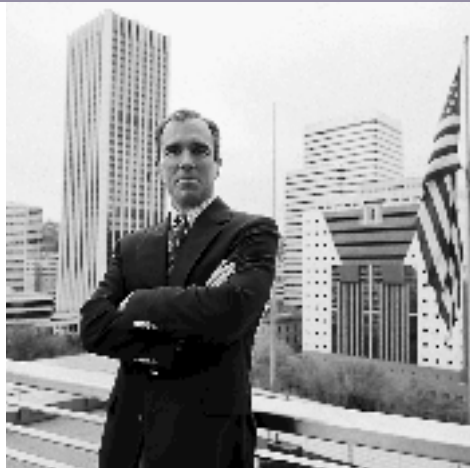
Mosman did well enough in law school to obtain a clerkship with Judge Malcolm Wilkey of the U.S. Court of Appeals for the D.C. Circuit, a stint that helped him into Justice Powell's chambers. About his chance to work for the Supreme Court, he recalls, "I was nervous at first, partly from the many changes—moving, the birth of our third child—that occurred within weeks of starting my D.C. clerkship. By the time I started the clerkship, I felt confident.

"I evaluated petitions for certiorari, wrote bench memos, drafted opinions, dealt with urgent death penalty filings, and played basketball in the highest 'court' in the land," he says. "Justice Powell was a southern gentleman. He taught me that you could be a very successful lawyer and still maintain high standards of conduct." Mosman found that the most satisfying aspect of his clerkship was having "the ability to exercise some positive influence on important issues."

Following the Powell clerkship, Mosman "wanted most to go to the smallest city that had a good legal system" and consequently left Washington, D.C., the summer of 1986 for Portland, Oregon. "I spent the next two years as an associate at Miller, Nash, Wiener, Hager & Carlsen," he relates about the law firm—which emphasizes work for timber companies, import and export in the Pacific Rim, and political work in the Portland area. "I tried several cases (mostly pro bono) and learned a lot from talented lawyers," he adds. "Contrary to a common perception, I enjoyed these two years very much."

"My family grew from three children to five, 18½ years apart; my oldest is a freshman at BYU, my youngest, 1½ years old. On a given day in June in Portland, if you drove quickly, you could ski on Mt. Hood, windsurf the Columbia, water ski on the Willamette, golf at Pumpkin Ridge, nap on the beach, and then go deep-sea fishing. We love it here."

Mosman left Miller, Nash in October 1998 to become a federal prosecutor—"the finest legal job in America," he affirms—and is currently an assistant United States attorney, still living in Portland.



usually reached a decision without a lot of discussion with his clerks. . . . The clerks had some influence in the details of the opinion, [but] Justice Powell reviewed every word carefully and invariably made changes in what we proposed."

Worthen knows that with Justice White "there was rarely any doubt about who would make the final decision." He remembers "Justice White's oft-repeated statement that the clerks were 'rarely in doubt and often in error,' whereas the justices 'were often in doubt and rarely in error.'" He adds, "Although Justice White would occasionally refer to his clerks as 'the big brains,' there was little question as to who the big brain really was. . . . As one former clerk observed, 'You have to remember, he's three steps ahead of everybody else.'"

### JUDGE AS LIFE MENTOR

In addition to "the wonderful quality of law practiced at the highest level," remarks Monte Stewart, "I appreciated the goodness and the humanity of all nine of the justices and their intent, their effort, to do right in every case. I was impressed with Chief Justice Burger's wisdom and instincts. . . . He was very good and kind, . . . very genuine." Karl Tilleman echoes Stewart's sentiments: "I learned a great deal about the law during my clerkships, but, more important, I learned of integrity and honor."

From the first to the most recent Law School graduate serving a Supreme Court clerkship, words describing impressions of the judge as a person expose a layer of the experience that underlies a clerkship's ultimate worth. One of the elements that bind judge and clerk as they sort through the intricacies of the law is the benevolence revealed during that struggle.

Michael Mosman tells a story about Justice Powell, "a southern gentleman who taught me that you could be a very successful lawyer and still maintain high standards of conduct":

*We had more capital punishment cases that term by far than any since 1976. During the time when they came in, there was no way we could leave for anything—Powell knew*

*that. One time, however, my wife was sick. Powell knew we had three children and found out that my wife was ill. So he insisted on paying out of his own pocket for a private professional nurse to come in and take care of my wife and the children while I had to be away working for him.*

*We ended up not using the nurse, but it was all set up. He wouldn't take no for an answer. Powell wouldn't feel comfortable keeping me there while my wife was sick.*

Eric Andersen, another Powell clerk, agreed that the justice “took a personal interest in his clerks.” Andersen remembers, “He took the time to become acquainted with our families and was concerned for their well-being.”

Karl Tilleman, who served as the clerk for the retired Chief Justice Burger, relates, “I worked very closely with him, traveling a lot. . . . I found that after he got to know you and trust you that a personal relationship developed that was very warm and extremely rewarding.”

In their role as a human being, says Kevin Worthen, a judge is “a true mentor. Most judges treat their clerks almost like their children—taking time to help them understand what is going on, pointing out ways in which they can improve. . . . This mentoring relationship continues, and even deepens in some cases, after the clerkship ends. . . . I heard one of his former clerks refer to the judge as his ‘father-in-law.’”

In his own relationship with Justice White, Worthen discovered to his delight that “the impact was not solely on the intellectual process.” Such experiences as “dinner at the Whites’ home, field trips to buildings in Washington, D.C., and basketball games . . . created a bond [that] goes much deeper than that of intellectual mentor and pupil. . . . Although reserved in demeanor, the justice managed to convey to his clerks the genuine warmth he felt for them.”

Worthen also describes White as a “man who defined the experience by the force of his personality,” one who taught and showed his respect for you through toughness. The justice’s teaching style is illustrated by one of Worthen’s many stories about Byron White:

## Von G. Keetch, '87

From his youngest days in Pleasant Grove, Utah, Von Keetch had hoped for the opportunity to attend Brigham Young University for his undergraduate degree. While his hopes were being fulfilled, he became very familiar with the J. Reuben Clark Law School. Even though Keetch had law school opportunities from “a number of so-called ‘top echelon’ law schools,” he chose BYU.

“By far the most influential factor in my decision was the faculty,” Keetch says. “As the time came to make my law school decision, I had significant exposure to such nationally known BYU professors and administrators as Rex

### RED, WHITE, AND COUGAR BLUE

Lee, Bruce Hafen, Carl Hawkins, and others. Put very simply, I wanted to learn the law from these individuals. More than anything else, they were the reason I decided to stay at BYU for law school.”

These individuals not only impressed Keetch, they also helped him become a Supreme Court judicial clerk. In July 1989, immediately following a clerkship with Judge George C. Pratt on the United States Court of Appeals for the Second Circuit in New York City, Keetch began a year with Justice Antonin Scalia. He particularly remembers the “long afternoon[s] of discussion and debate focus[ing] on all of the cases that had been argued that week. These

discussions were always fascinating; rarely did all of the clerks agree on a particular outcome. Opinions were often strongly held, and sometimes the discussion was lively.”

During the Term, Keetch also worked several hours per week for retired Chief Justice Warren Burger. “Because the chief was retired, he did not engage in any court work. My duties for him included writing speeches, assisting him with his writing, and participating in numerous activities commemorating the Bicentennial of the Constitution.”

Immediately after his clerkship Keetch accepted a position with the Salt Lake City law

firm of Kirton & McConkie. “In my practice,” he says, “I spend a great deal of my time providing advice to [the Church] in the areas of constitutional, religious, and appellate law. When time permits and when I truly find a case of interest, I also greatly enjoy filing petitions for certiorari or filing an amicus brief on behalf of interested parties.”

“An avid basketball player and fan,” Keetch finds relaxation in sports and spending time with his wife, Bernice, and their five children at home in Highland, Utah. “From time to time,” he says, “I serve as an adjunct professor at the J. Reuben Clark Law School, where I have taught first amendment law and a seminar on the United States Supreme Court.”



## Denise Posse-Blanco Lindberg, '88

While Denise Lindberg was serving as a judicial clerk for Justice Sandra Day O'Connor in 1990, she noticed a pillow in the justice's chambers embroidered with the words "Maybe in error, but never in doubt." Eight years later, on the day Lindberg was sworn in as a trial judge for the Third District in Utah, her daughter-in-law gave her a pillow with the same saying. She says, "I keep it in my chambers as a daily reminder of Justice O'Connor and of the need to be true to my own voice."

As the first woman from BYU's Law School to serve as a Supreme Court clerk, as the school's first clerk with a minority background, and as the first BYU clerk to serve Justice O'Connor, Lindberg could point to herself as being unique. But before she ever went to law school she stood out from the crowd.

The story of her life before and after coming to the United States as a Cuban immigrant partially explains her drive. Lindberg was born into a life of privilege in Havana, where she attended private schools until Fidel Castro's oppressive regime forced her family to flee the country. Stripped of their wealth, the Posse-Blanco family settled in New Rochelle, New York. Education became Lindberg's refuge. "One of the few things I did well was school," she says. "It was a place where I found I could control the outcome."

And well she did: Converted to the Church while in high school, Lindberg earned a bachelor's degree at BYU, then completed two master's degrees and a PhD at the University of Utah. Thinking her "days of formal schooling were over," she discovered after talking with BYU law professor Eugene Jacobs—who said she was "ornery enough that [she]'d probably make a good lawyer"—that she was wrong. Within three weeks she was accepted to BYU's Law School and awarded a full scholarship.

Lindberg graduated second in her law class before serving a one-year clerkship with the Honorable Monroe G. McKay of the United States Court of Appeals of the Tenth Circuit in Salt Lake City. This background, plus "Rex Lee's recommendation," led her to the clerkship with Justice O'Connor. Having lived in Washington, D.C., for some time, first as an associate attorney with the D.C. office of Sidley & Austin (Lee's law firm), then as a clerk for the Supreme Court, Lindberg and her husband decided to remain in the D.C. area so that the youngest of their two sons could finish high school there. She practiced for three years with Hogan & Hartson before the Lindbergs moved back to Salt Lake City, where she worked as general counsel for Aetna Life Insurance Co. and then was recently appointed as a judge.

Lindberg's husband "wanted to get in on the act" and graduated from BYU's Law School two years after his wife. He now practices as a land-use attorney in Draper, Utah. Lindberg, who looks forward to being a grandmother twice this year, says, "Our youngest son also anticipates a career in the law."



HER OWN ROBE

*On one occasion early in the Term, I wrote a bench memo noting that the briefs of one party had not adequately responded to what I thought was the determinative argument. Several days after I had turned in the memo, but before conference on the case, the justice and I were discussing the case. When I raised what for me was the dispositive argument, the justice countered in quite a loud voice, "Don't you think [the party opposing the argument] rebutted that argument in the brief?" I said, somewhat hesitantly, "No." Then even more challengingly he said, "You really don't think they did?" I said, somewhat more assertively, "No." He then smiled and said, "I guess you're right."*

Worthen explains, "The challenge came not because Justice White wanted to unnerve me but because he wanted to make sure I had thought deeply enough about my position to be confident of it."

The respect between justice and clerk was apparently mutual during Worthen's term at the Supreme Court. White's clerks were in awe of the man, who has been described as being "as close to a true Renaissance person as our modern complex times will allow." Not only was he a capable judge but he was an All-American and professional football player. And as difficult as their workload was, notes Worthen, "it was hard [for the clerks] to complain about too much work to a justice who even in his 70s arrived at work at 7:00 a.m. and who regularly frequented chambers on weekends. . . . One former clerk observed, 'I tried beating [Justice White] into work in the morning, but I finally figured it was like trying to open the refrigerator door . . . before the light comes on. It can't be done.'"

But Justice White "valued competition not because it gave him a chance to show off his magnificent abilities," Worthen reemphasizes, "but because it was a way of bringing out the best in those who competed." And the clerks enjoyed having their best brought out: "Clerking for Justice White was a thrilling and wonderful exercise in combat, from intellectual to

basketball," said one White clerk. "Every day was like the Athenian youth going with Socrates, and Socrates won 38 to 0 on a daily basis."

Chief Justice William H. Rehnquist impressed Steve Sargent as "a tremendous teacher. He was also a great man with a wonderful sense of humor." Sargent says, "He taught me much about how to work out a compromise and about how to make your views known without being offensive or didactic."

Though he has yet to clerk for the man, Jay Jorgensen has also gotten a sense of what Chief Justice Rehnquist is like. In his interview with the chief justice, he was

THE FREEDOM FROM  
OBLIGATION TO A PARTICULAR  
CLIENT WHILE DEBATING  
REAL-LIFE LEGAL ISSUES WILL  
PAY OFF LATER FOR LAW  
CLERKS WHEN THEY BANK ON  
THEIR ABILITY TO SEE ALL  
SIDES OF AN ARGUMENT.

surprised to learn that not only had Rehnquist heard of the small rural town of Roosevelt, Utah, where he grew up, but as a young man Rehnquist hiked across the country and slept on the Vernal courthouse lawn. "I was surprised how gracious and down-to-earth Rehnquist was in our interview," Jorgensen says.

#### LIFE IN THE FAST LANE

Life at Court is illuminating, but the sources of that enlightenment can come at law clerks from all directions, and they soon discover that they have to keep their eyes wide open. A daily menu of researching, writing, and recommending offers

them a full plate of work. Kevin Worthen feels that some of the writing assignments, such as draft opinions, are "more interesting and 'prestigious' than others. Work on draft opinions, after all, might actually be published in a somewhat recognizable form for the world to see. Bench memos, on the other hand, are generally read only by the justice and then relegated to the case file, never again to see the light of day."

Clerks have to keep reminding themselves of all the skills they are honing as they wear out the clock and themselves. Dissents from denial, where the clerk "had to read the cases themselves and certify whether the conflict was real," recalls Worthen, were "an often unanticipated addition to the voluminous work for which the clerk was already responsible." Michael Mosman admits that the work was exhaustive; he would arrive at the judge's chambers about 6 a.m. so he could leave early enough to spend some of the evening with his family.

Knowing that there is method to this madness helps make all the work palatable to the clerks. Worthen learned that though the judge ultimately made his own decision in a case, he "wanted to hear all that the clerks had to say. Clerks were used as sounding boards to make sure that the justice fully considered all possible arguments and points of view.

. . . One former clerk observed that Justice White "[w]asn't invested in an argument; [if] you could hit him back with a chair, intellectually speaking, he could be convinced."

"[This] role of sounding board or debate opponent was for many the most gratifying aspect of their clerkships," says Worthen. "To be able to engage in free-flowing debate on important legal issues—knowing that the justice really wanted to know what you thought, not what you thought he thought—was an unforgettable and, for many White clerks, a never-again-to-be-paralleled experience.

"At times this leeway in drafting opinions and expressing views about a case



## Karl Tilleman, '90

Karl Tilleman's first shot at being a professional was not in a court of law—it was on a basketball court. Once told he was the first “Canadian Olympic athlete” to clerk at the Supreme Court, Tilleman views his career move as circumstantial. He explains the rebound:

*I became an attorney because the night I proposed to my wife, Holly, my father-in-law told me that I should think about my future and how I would support a family. He told me that he believed I should be some type of “professional.” Having failed at being a professional basketball player and wanting badly to marry Holly, I decided I would be an attorney. He approved, and I proceeded to prepare for law school.*

The Calgary, Alberta, native did well enough at BYU's Law School to win the support of his professors in obtaining clerkships with retired Chief Justice Warren E. Burger and Justice Clarence Thomas. “Frankly, I found my initial days at the Supreme Court to be somewhat intimidating,” Tilleman admits. “Four years earlier I was playing basketball in Canada. At first I had to wonder what I was doing clerking at the Supreme Court of the United States. I also found my coclerks to be extremely bright and competent. I felt after several weeks, however, that I was able to do my job as well as the other clerks.”

Tilleman says that “being able to analyze complex legal issues quickly and then write effectively about those issues” were his greatest qualifications for the Court clerkship, skills he learned not only in law school but also during a clerkship with the Honorable John T. Noonan, Jr., Ninth Circuit Court of Appeals, in 1990–91. While in Noonan's chambers he “researched issues,

### SUITING UP

prepared bench memorandum concerning pending cases, debated issues with other clerks in the chambers, and assisted the judge”—experience he would need at the court of Justice Thomas two years later.

Before joining four other clerks in Justice Thomas' chambers, Tilleman served as the clerk of the retired Chief Justice Burger. “I assisted him with a variety of duties in his capacity as the retired chief justice, including . . . writing speeches, a book, and several articles,” he says. And, Tilleman adds, although the chief justice “was known for observing a lot of formalities,” he got to know him personally as he worked and traveled with him. “Both my wife and I felt very close to the justice and his wife.”

Following his Supreme Court clerkship, Tilleman went into private practice with Jones, Day, Reavis and Pogue in Washington, D.C., working alongside Timothy Flanigan, a former clerk of Chief Justice Burger and a BYU graduate. Three years later Tilleman left for Phoenix, Arizona, where he continues to work for the law firm Dalton, Gotto, Samson, and Kilgard.

Though Tilleman became an attorney, he “also married Holly,” he points out, which “has been worth it all.” When he is not spending time with his wife and four children, Tilleman finds relief from his law work “by being a bishop, which helps keep everything in perspective.”



could be heady for the clerks,” adds Worthen. “As clerks worked on draft opinions, they could entertain thoughts of shaping the course of the law, of penning words that would live on in Supreme Court decisions to be studied with awe by succeeding generations. But the euphoric dreams were generally short-lived—terminated with the return of the draft bleeding with red ink from the justice's pen.”

One of the satisfying things about working at the Supreme Court level is, as Jim Gordon writes in *The Judicial Clerkship Job Hunt Book*, “You do not represent a particular client, and you influence the decision-making process in important ways [as you work] with the judge and the other clerks.” David Campbell adds, “For one year you get to question what is right or wrong in particular cases. From then on in the practice, the right answer will be your client's answer unless you become a judge. So there is an objectivity you get to bring into it and a creativity that most lawyers will never get the opportunity to experience.”

This freedom from obligation to a particular client while debating real-life legal issues will pay off later for law clerks when they bank on their ability to see all sides of an argument. “Seeing how things work at the decision-making level is immensely valuable when one begins to practice law and to craft arguments in support of a particular legal position,” says Von Keetch. *The Judicial Clerkship Job Hunt Book* reports, “Almost all lawyers who have worked as law clerks will tell you that they are better advocates as a result.”

### POSITIVE SIDE EFFECTS

As they considered the value of their Supreme Court clerkships, several of the Law School graduates commented on two personal benefits: self-confidence and satisfaction.

When asked what the most gratifying thing about his clerkship was, Monte Stewart—who was an academic leader in his senior class at BYU and had been offered admission to Harvard Law School—responded: “Finding out that I

could do it.” What the clerkship adds to the already-high self-confidence of these capable Law School grads is often in itself worth the experience.

Kevin Worthen “would recommend that students pursue clerkship options based solely on the personal satisfaction they will receive during the experience.” Von Keetch’s greatest satisfaction came from “working with colleagues who were among the brightest the legal profession had to offer on issues that were some of the most difficult to be found in the law.” Karl Tilleman says, “The most satisfying thing about my clerkship was getting to know such remarkable men and women.”

Although Denise Lindberg agrees that the “continuing relationships are, by far, the most satisfying part of a clerkship,” she adds that “having a front-row seat . . . observing the day-to-day workings of the Court—which to most outsiders (even in the law profession) remains a mystery—was very exciting. Despite the unrelenting hard work, it was always a thrill to sit in ‘my’ justice’s chambers on the Saturday before oral arguments . . . absorbing . . . the core principles that guided her decision making.”

#### OPENING DOORS

Opportunities are like dominoes: one can activate another. Those “lucky” enough to serve clerkships for a Supreme Court justice find that the door to the courtroom not only opens to a valuable learning experience but also opens up other opportunities benefiting their law careers.

The decision of what that career will be is often shaped by a clerkship experience. Kevin Worthen says, “The longer I am away from the actual clerkship, the more I have come to appreciate the positive impact that a judicial clerkship can have on a person’s life and career in ways that I had not anticipated while clerking.” He concedes that his interest in Indian law grew while he clerked for Justice White and saw three or four Indian law cases reach the Supreme Court. Worthen, a BYU Law School professor, also says, “One of the main things my clerkship did was to convince me I wanted to teach law. I enjoyed the pure discussion and debate of the law and what the law can and should do.”

## Stephen M. Sargent, '94

A shift from accounting to law seemed like a natural move to Stephen Sargent, who grew up in Fruit Heights, Utah, in a home with a father who continues to practice law after 30 years. “He seemed to enjoy his work, and he always made time for his children,” Sargent says. “In talking with him, I decided the practice of law was something that seemed both challenging and satisfying.” Apparently Sargent’s decision was right.

His acceptance as a judicial clerk for Chief Justice William H. Rehnquist for the 1994–1995 Term capped Sargent’s legal education. Having served

#### FIVE PERCENT BASKETBALL

as editor in chief of the BYU Law Review during the 1992–93 school year, he sat for the Washington State Bar in July 1993, then moved with his wife and young daughter to Kansas, where he clerked a year for Judge Deanell Reece Tacha of the U.S. Tenth Circuit Court of Appeals. After a year in Kansas,

Sargent began his clerkship in Washington, D.C.

“I felt that law school prepared me pretty well for my clerkship,” Sargent relates, admitting that he “was intimidated clerking with others who had gone to the ‘big name’ schools.” But working on cases that ranged from Vernonia—a fourth-amendment case questioning the legality of drug testing of student athletes—to death penalty actions, he discovered “an opportunity to see and work with some of the brightest legal minds in the country.” He says, “It taught me the value of hard work in the legal field. I gained a great appreciation for the Supreme

Court as an institution and a tremendous amount of respect for the justices who serve on the Court.” Like many judicial clerks, Sargent also appreciated that the docket of hard work often included a good game of basketball as well as tennis doubles with the chief justice every week. (No, the gold stripes on the sleeves of Rehnquist’s robe—added by the chief during Sargent’s clerkship—were not intended for athletic reasons.)

Leaving the Supreme Court but not Washington, D.C., Sargent worked as a litigation associate at the city’s law firm of Hogen & Horton for two years. In September 1997 he and his family moved west to Salt Lake City, where Sargent continues to work in estate planning for the law firm of Parr Waddoups Brown Gee & Loveless.

Sargent says that just about anything that takes him away from his law work provides a break for him. But he particularly enjoys basketball and golf and, of course, spending time with his wife, Kathryn, and their four children: Maren, 8; Spencer 4; Kendall, 2; and Samantha, 1.



## Jay T. Jorgensen, '97

Jay Jorgensen, the most recent Law School graduate to serve a Supreme Court clerkship, is the first to receive the position since the passing of BYU President and first Law School Dean Rex E. Lee in March 1996. Jorgensen acknowledges, however, that his knowing Lee was a reason he chose to attend the Law School and that Lee's opinion of his own Supreme Court clerkship influenced his decision to apply for a clerkship.

Jorgensen, who will work for Chief Justice William H. Rehnquist this coming fall, relates, "After I'd gotten news that I would interview with the chief justice, I spoke with several of his previous clerks to try and learn what I should expect, and I spoke with Steve Sargent" (who clerked for Rehnquist in 1994). "I don't know why I got it. . . . I was so surprised when the chief justice's secretary called."

Thinking back on why he went into law, Jorgensen describes his early decision: "I have known that I wanted to be a lawyer since I was about seven or eight. It's kind of funny, the thing that made me want to be a lawyer: I was sitting in my living room watching television, and my parents were watching



### THE LAST AND THE FIRST

President Carter give an address, and I thought to myself, you know, I want to be just like him. So I decided right then that I would become a lawyer. . . . It wasn't until years later that I learned that he wasn't a lawyer."

Besides the influence of Lee, Jorgensen's desire to "have some spiritual grounding in the law" helped him choose BYU's Law School. "My own personal experience shows me that law school tends by its very nature to invite people to rely on their own reasoning and not on what I would call the Spirit," he says. "I thought I would get that at the J. Reuben Clark Law School—and, indeed, I did."

During that three-year period, Jorgensen participated in various activities, including law review, trial advocacy, writing competitions, and the Federalist Society for Law & Public Studies. He also served as the national editor for an issue of the *Harvard Journal of Law and Public Policy*. During the summer of 1996 he worked in the Washington, D.C., office of Kirkland & Ellis, where he became acquainted with former Solicitor General Kenneth W. Starr. Solicitor General Starr occasionally spent time with Kirkland & Ellis' law clerks discussing his litigation background, an experience that influenced Jorgensen's desire to seek a litigation and appellate practice.

The fall after graduating from law school, Jorgensen clerked for Judge Samuel Alito, Jr., of the United States Court of Appeals for the Third Circuit. Following the clerkship with Alito, he returned to Utah as an associate at Stoel Rives in Salt Lake City, where he will continue to work until moving to Washington, D.C., in June. Jorgensen and his wife, Melissa, are pleased to return to Washington—this time with two "wonderful" daughters, who are four months old and 18 months old.



Eric Andersen says, “Ever since law school I had wanted to be a law school teacher,” and the clerkship “had great value in preparing me to teach law.” Andersen, a faculty member of the University of Iowa College of Law for the past 15 years and now associate dean, says, “I read judicial opinions far differently than if I had not served as a judicial clerk, and I try to pass some of that insight along to my students.”

That a Supreme Court clerkship, through its very prestige, empowers career opportunities was observed by Monte Stewart when the Law School’s charter class was graduating, but no law firms were coming on campus to interview.

*It was tough—nobody could get a job with a big firm, no matter what your credentials were, even if you were editor in chief of the law review and top of your class. We plastered one room of the law review with rejection letters from big firms.*

*Suddenly (after the clerkship) I’d get telephone calls out of the blue from senior partners of top firms around the country calling as if we were good buddies and wanting to see if I would go with their firm.*

The correlation between Supreme Court clerkships and law careers is not imagined. Many of Justice White’s clerks “have gone on to distinguished careers. . . . [T]here are four federal courts of appeals judges, a former solicitor general of the United States [Rex E. Lee], a member of Congress, a former state attorney general, the president of a university [Rex E. Lee], and the dean of an Ivy League law school,” Worthen reports. “There are also, of course, numerous law professors,” he quips. “Not even Justice White could redeem all his clerks.” Andersen believes that for him “the single most important thing for getting a job teaching was [his] clerkship with Powell.”

The personal connections lawyers make while serving as clerks also increase their visibility within the legal profession. “Who you know” at this level of the law can pave the way for a lawyer’s career. “A clerk often creates a lifetime network of friends and professional acquaintances who can have a positive impact on the

course of a clerk’s future career,” writes Worthen in *The Judicial Clerkship Job Hunt Book*. “The people with whom a clerk works, especially judges and other clerks, are either in influential positions—in the case of judges—or often headed in that direction—in the case of clerks.” The handbook further reads, “The recommendation of a judge known in the legal community will carry a great deal of weight with potential legal employers.” For Karl Tilleman, Timothy Flanigan, a fellow clerk of Chief Justice Burger as well as a BYU alum, introduced him to the law firm he joined after his clerkship.

Aside from what others can do for their careers, the clerks simply appreciate the individuals with whom they worked. Von Keetch muses, “I will always treasure the friendships and relationships fostered during the year I was at the Court.”

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#### A BRIGHT HORIZON

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The view has been and will be great for the nine Law School graduates who have seen the law from the “top of the mountain.” But will this record continue? Will future generations of J. Reuben Clark Law School students climb to such heights and clerk for the Supreme Court?

The outlook appears favorable for those students who work hard and set their sights as high as those of their predecessors—capable men and women who have become very good at seeing the finest detail in the big picture and for spotting those who should follow after them. Michael Mosman believes, “Anyone who puts a decent amount of effort into law school at BYU will come out with the same training as any prestigious school graduate.”

Is it worth the climb? The Law School’s nine grads who made it think so. Von Keetch speaks for each of them when he says, “A lawyer’s product is himself or herself. Refining that product and making it as effective as possible—to vigorously represent one’s client and to promote justice as an officer of the court—should be the paramount goal of each and every attorney. There is no greater university for learning and applying this concept than a clerkship position at the United States Supreme Court.”

# *the* Challenge: BASING YOUR CAREER ON *Principles*

IN THEIR BEST-SELLING BOOK of a few years ago, entitled

by Elder  
Alexander B.  
Morrison,  
First Quorum  
of the  
Seventy

> This address  
was presented  
to the J. Reuben  
Clark Law  
Society in  
Edmonton,  
Alberta, Canada,  
on February  
26, 1999.

*In Search of Excellence*, Peters and  
Waterman point out that the great-  
est fear people have is not that they  
will die—it is not the fear of sep-  
aration from loved ones, or even of  
extinction—but the fear that life  
will not have mattered, that its  
struggles and triumphs, tears and  
laughter will all have been in vain.

ILLUSTRATIONS BY BRAD HOLLAND





In the cynical world in which we live, confronted each day as we are by “man’s inhumanity to man,” by the cruelty and indifference of much of human existence, it seems to many that life does indeed have little meaning.

We live in a society saturated with self-absorption, which promotes and rewards excessive materialism, mocks and derides moral principles, and worships secularism. Increasingly, Western society is bereft of the enduring virtue of honor, of which Pericles, the great Athenian statesman, said two and a half millennia ago: “For it is love of honor that never grows old; and honor it is, not gain, as some would have it, that rejoices the heart of age and helplessness.”

Faced with the wintry reality of life, with all its contradictions and imperfections, cruelty and injustice, one can feel some sympathy for those who, in their despair, proclaim that life is but a hollow charade, an obscene joke, or, in the words of Shakespeare’s *Macbeth*, “a walking shadow, a poor player that struts and frets his hour upon the stage, and then is heard no more . . . a tale told by an idiot, full of sound and fury, signifying nothing” (Act 5, Scene 5, lines 26–28).

But I must tell you in the strongest possible terms that those who feel like that are wrong, tragically and terribly so. “Man is that he might have joy,” the scriptures tell us. Our task is to fulfill the measure of that destiny by tasting the sweetness of the joy the Lord wishes for us. As we do so, the scales of cynicism, pride, indifference, and disregard for others will fall away from our eyes, and we will begin to see who we are and what God expects us to do with our lives.

My only wish today is to help contribute to your search for understanding. I have no quick-fix “do-it-yourself” recipe book to offer—only a few principles that are well worn but proven. As we apply basic principles, we gain a perspective of things as they really are. We see in life’s challenges opportunities to serve.

The darkness of night portends the dawning of a new and better day. The greatest Englishman of this century, Winston Churchill, knew of the opportunities to serve during difficult days when

One of the great tragedies of life

is to observe men who *struggle* up the  
was *leaning* against the wrong wall.

he spoke at Harrow School in October of 1941. He said:

*Do not let us speak of darker days; let us speak rather of sterner days. These are not dark days: these are great days—the greatest days our country has ever lived; and we must all thank God that we have been allowed, each of us according to our stations, to play a part in making these days memorable in the history of our race.*

I group my advice under several headings: prepare yourselves temporally and spiritually, and see that preparation as one grand eternal round; set your priorities straight; learn the spirit of service and the joy of work; and let devotion to duty and honor be the hallmarks of your life.

#### Prepare Yourself Temporally and Spiritually

If you are to serve yourself, your family, community, country, and church properly; if you are to be your brother’s keeper in the sense that you accept your measure of responsibility for others, you must be prepared. You cannot contribute if you don’t have the skills and knowledge to do so. Sincerity will not suffice and goodwill will not win. Consider Winston Churchill’s words as he described the day he became prime minister on May 10, 1940. If ever there was a time for action and not for preparation, that was it. The French army was collapsing piecemeal before the ferocious fury of the German blitzkrieg. Britain stood alone, nearly defenseless. There was serious doubt the British Expeditionary Force could be saved. Churchill said of that day:

*As I went to bed at about 3:00 a.m., I was conscious of a profound feeling of relief. At last I had authority to give direction over the whole scene, and I felt as though I were walking with destiny, that my past life had been a preparation for this honor, for this trial. I could not be reproached, either for having made the war or for lack of preparation for it, and yet I felt I knew a good deal about it and I was sure I would not fail.*

He was prepared! No preparation can occur in the absence of work. What the world mistakes for genius is, as Edison pointed out, 90 percent perspiration and 10 percent inspiration. If you wish to serve, prepare yourself through study, work, and faith.

As you struggle to learn and relearn in the intellectually demanding field of the law, I urge you to cultivate a flexibility of attitude, a willingness to venture into fields not yet cultivated by you, a catholicity of interest that sees all learning as interrelated. You must make learning an eternal quest. If I may be permitted a personal comment, the chance to learn is to me one of the greatest privileges of life and one of the great attractions and fascinations of the restored gospel. Indeed, two doctrines of the Church attracted me as a young university student in Edmonton nearly half a century ago: eternal marriage and eternal progression. I remain grateful for them and perhaps



## ladder of their careers [and find it]

more knowledgeable about their importance now than I was as a callow youth.

President Spencer W. Kimball encouraged us to lengthen our stride. That advice applies in the temporal realm as much as in the spiritual. Learn to stretch your mind, to reach a little further each day in testing the limits of your intellectual capacity. We are told that most of us use less than 25 percent of our intellectual abilities. We can all do much more than we now do. That stretching may be painful. It will certainly be exhausting. But it is ever so exhilarating. Indeed, it is intoxicating! Make it a lifelong habit to flex and stretch your intellectual muscles.

There is a Chinese proverb that states:

*To live and not to learn is not living;*

*To learn and not to understand is not learning;*

*To understand and not to do is not understanding.*

Seek to understand. Develop and retain an eternal curiosity. Some of you may remember Merlin's advice to King Arthur:

*The best thing for being sad . . . is to learn something. That is the only thing that never fails. You may grow old and trembling in your anatomies, you may lie awake at night listening to the disorder of your veins, you may miss your only love, you may see the world about you devastated by evil lunatics, or know your honor trampled in the sewers of baser minds. There is only one thing for it then: to learn. Learn why the world wags and what wags it. That is the only thing which the mind can never exhaust, never alienate, never be tortured by, never fear or distrust, and never dream of regretting. Learning is the thing for you. [T. H. White, *The Sword in the Stone*, p. 183]*

In a few words: Seek always to learn!

## Get Your Priorities Straight

Several years ago President David O. McKay in speaking to a group of Church employees put into perspective what we should concentrate on in our lives. He said:

*Let me assure you, brethren, that someday you will have a personal priesthood interview with the Savior Himself. If you are interested, I will tell you the order in which He will ask you to account for your earthly responsibilities.*

*First, He will request an accountability report about your relationship with your wife. Have you actively been engaged in making her happy and ensuring that her needs have been met as an individual?*

*Second, He will want an accountability report about each of your children individually. He will not attempt to have this for simply a family stewardship but will request information about your relationship to each and every child.*

*Third, He will want to know what you personally have done with the talents you were given in the preexistence.*

*Fourth, He will want a summary of your activity in your Church assignments. He will not be necessarily interested in what assignments you have had, for in His eyes the home teacher and a mission president are probably equals, but He will request a summary of how you have been of service to your fellowman in your Church assignments.*

*Fifth, He will have no interest in how you earned your living, but if you were honest in all your dealings.*

*Sixth, He will ask for an accountability on what you have done to contribute in a positive manner to your community, state, country, and the world. [Reported by Cloyd Hofheins in a talk to the Seventies Quorum of Provo, Utah, Oak Hills Stake, May 16, 1982]*

You will note that the Lord puts first emphasis on family—your relationships with spouse and children. He is certainly less interested in how you earn your living, though He is most concerned whether you are honest in your dealings. Whatever else you do, provide time for your family. If you are as busy and active as you should be, it will not always be easy to do so.

Sometimes you will not get it right (at least I certainly haven't), but keep on trying. Call down the powers of heaven to help you in your struggle. I promise you the needed assistance will be yours.

"It takes more nobility of character," Stephen Covey has said, "to do whatever is necessary to build that one relationship [the family] than to labor diligently and faithfully for the many others outside it."

One of the great tragedies of life is to observe men—and increasingly women—who struggle up the ladder of their careers, perhaps, though certainly not necessarily, over the backs of colleagues, and in the process, through carelessness, neglect, or selfishness, lose their families. They divorce their spouse, from whom, in the euphemism of the day, they claim to have "grown apart" in their search for "personal fulfillment," whatever that is. Their children drift away, finding no warmth, no giving, no help, no understanding, and then, perhaps in the twilight of their lives, these gray husks of men find that all they've done has turned to ashes. The ladder up which they climbed was leaning against the wrong wall. It led not to light and joy but to darkness of mind and spirit.

It need not be so. Many there are whose lives are tributes to the happiness that comes from commitments made and renewed daily. President Gordon B. Hinckley tells a sweet and loving story that illustrates, far better than I could, the strength and joy that come from having proper priorities in life. He relates the following:

*I think of two friends from my high school and university years. He was a boy from a country town, plain in appearance, without money or apparent promise. He had grown up on a farm, and if he had any quality that was attractive it was the capacity to work. He carried bologna sandwiches in a brown paper bag for his lunch and swept the school floors to pay his tuition. But with all of his rustic appearance, he had a smile and a personality that seemed to sing of goodness. She was a city girl who had come out of a comfortable home. She would not have won a beauty contest, but she was wholesome in her decency and integrity and attractive in her decorum and dress.*





*Something wonderful took place between them. They fell in love. Some whispered that there were far more promising boys for her, and a gossip or two noted that perhaps other girls might have interested him. But these two laughed and danced and studied together through their school years. They married when people wondered how they could ever earn enough to stay alive. He struggled through his professional school and came out well in his class. She scrimped and saved and worked and prayed. She encouraged and sustained, and when things were really tough, she said quietly, "Somehow we can make it." Buoyed by her faith in him, he kept going through these difficult years. Children came, and together they loved them and nourished them and gave them the security that came of their own love for and loyalty to one another. Now many years have passed. Their children are grown, a lasting credit to them, to the Church, and to the communities in which they live. . . .*

*. . . Forty-five years earlier people without understanding had asked what they saw in each other. . . . Their friends of those days saw only a farm boy from the country and a smiling girl with freckles on her nose. But these two found in each other love and loyalty, peace and faith in the future.*

*There was a flowering in them of something divine, planted there by that Father who is our God. In their school days they had lived worthy of that flowering love. They had lived with virtue and faith, with appreciation and respect for self and one another. In the years of difficult professional and economic struggles, they had found their greatest earthly strength in their companionship. Now in mature age, they were finding peace and quiet satisfaction together. Beyond all this, they were assured of an eternity of joyful association through priesthood covenants long since made and promises long since given in the House of the Lord. [Ensign, March 1984, pp. 3-4]*

Having prepared yourself, or, more accurately, having begun the eternal task of preparing yourself, go forth to serve, expressing always the joy of work, seeing it as a spiritual necessity as well as a temporal imperative. As you do so, I admonish you to keep ever in your mind these inspired words of King Benjamin: "I

would that ye should impart of your substance to the poor, every man according to that which he hath" (Mosiah 4:26).

We lighten Christ's yoke as we accept some of the burdens of others, as we help them to have hope rather than dark despair, as we apply a healing balm of Gilead to their scarified, suffering souls.

A few years ago the *Wall Street Journal* (November 13, 1992, pp. A1, A16) recounted a heartwarming tale of suffering, compassion, and Christlike service. Some 20 years ago, Dr. Ian Jackson, a world-famous craniofacial surgeon, was on a charity mission from his native Scotland to Peru. There he met David Lopez, a tiny Indian boy, just two years old, who had virtually no face at all. A gaping hole covered the areas where his mouth and nose should have been. There were no upper teeth or upper jaw. To drink, David simply tilted back his head and poured the liquid straight down. His lower teeth could actually touch his forehead. Most of David's face had literally been eaten away by a terrible parasitic disease called leishmaniasis.

Relief workers begged Dr. Jackson to help. He was leaving for Scotland the next day, but he agreed to try to rebuild David's face if the boy could come to Scotland. Eventually a way was found, and the Jacksons went to Glasgow Airport to pick up David. As he walked down the ramp, they saw a tiny boy wearing scuffed white boots and a hand-knit poncho. A woolen cap was pulled so low on his head that only his big brown eyes and the round hole beneath them were visible.

The Jacksons took David into their home and into their hearts. There followed long years of surgery—more than 80 operations in all—as Dr. Jackson attempted to give David a new face. All of the doctor's services were donated. Each summer, as other children played, David would be in the hospital, his head swathed in bandages.

The painstaking, pioneer surgical efforts to rebuild David's face went on for 15 years. Today David looks like a young man who has been in a serious automobile accident, but he is well adjusted and fully functional. He used to be teased and tormented about his looks, but over the years, that has died away.

We must move beyond a

## *unidimensional view of man*

to consider all that is needed to

give meaning and value to life.

The Jacksons now live in the United States, where Dr. Jackson continues to be one of the leading craniofacial surgeons in the world. In 1982 Mrs. Jackson flew to Peru to try to find David's parents. After a long journey downriver from a remote Catholic mission, David's father was found. He explained that the boy had been born healthy, but when he developed leishmaniasis after having been bitten by an infected sandfly, he was taken to the mission to seek treatment. The father gave permission to the Jacksons—who had developed a deep love for David—to adopt him as their own. Since 1984 David Lopez has been David Jackson.

I don't know whether Dr. Jackson is a Christian or not. But I do know he is doing God's work. "When ye are in the service of your fellow beings ye are only in the service of your God" (Mosiah 2:17).

As we lose our lives in compassionate service to others, we develop a deeper understanding of our dependence on God. I return again to the wisdom of King Benjamin: "And now, if God, who has created you, on whom you are dependent for your lives and for all that ye have and are, doth grant unto you whatsoever ye ask that is right, in faith, believing that ye shall receive, O then, how ye ought to impart of the substance that ye have one to another" (Mosiah 4:21). Said faithful

Nephi, "I know in whom I have trusted. My God hath been my support; he hath led me through mine afflictions in the wilderness; and he hath preserved me upon the waters of the great deep. He hath filled me with his love, even unto the consuming of my flesh. . . . he hath heard my cry by day, and he hath given me knowledge by visions in the nighttime. . . . And upon the wings of his Spirit hath my body been carried away. . . . I will trust in thee forever" (2 Nephi 4: 19–21, 23, 25, 34).

Now of course you can't do all that needs to be done to help change this world, but you can do your best and hope that others will follow.

As you strive to serve others, I urge you to look beyond those who are your clients. They deserve your very best, of course, but your concern must not stop with them. You must look to the broader community in which you live and work. Voluntary service to others will be an increasingly significant characteristic of caring communities in the new millennium. It takes many forms, including work in your church, neighborhood schools, and professional and service organizations and assistance to the disadvantaged—the poor, children, immigrants, etc. In Utah, lawyers are being encouraged by Legal Services, the Disability Law Center, and the Legal Aid Society to donate each year the monetary equivalent of two billable hours to provide free legal services to those in need. The Church has announced that if the drive to do so raises \$300,000, it

will donate an additional \$100,000. I commend that sort of initiative to you, tailored, of course, to fit the needs of your own community.

It will take both courage and commitment if you are to help change the world as it must be changed. Do not lose your idealism. Do not slip into the sophisticated cynicism of those who sell their moral integrity for this world's goods. Do not become so tied to your mortgage payments, career ambitions, company loyalties, or professional associations that you become afraid or unwilling to search for the truth and to speak out in its defense. Corporate greed, bureaucratic empire-building, and political venality all flourish because otherwise good men and women are unwilling to say no to what they recognize in their hearts is wrong. "I was only obeying orders," they say. "You can't fight City Hall." Of such is born the moral outrage of our time. In less spectacular fashion, but of equal importance, such a decline in commitment to moral integrity leads to an indifferent, almost passive acceptance of the myriad of minor corruptions of our society.

The demands of the future relate not only to man's physical needs but to all of the dimensions of human existence. It is ironic that the rise of materialism has resulted in a decline in the quality of man's spiritual life. This potentially fatal imbalance can only be redressed if we begin to pay proper attention not only to the things that are Caesar's but also to those that are God's. Man obviously needs food, shelter, clothing, clean water, education, and health care. But he also needs love and hope and those other attributes of the spirit that collectively contribute to the quality of life. In Teilhard de Chardin's words, we must seek for a future "consisting not merely of successive years but of higher states." The current witless pursuit of materialism bears



within it the seeds of death for industrial societies and perhaps for the world as we know it. We must move beyond a unidimensional view of man to consider all that is needed to give meaning and value to life, all that contributes to the formation of the whole man.

#### Let Devotion to Duty and Honor Be Your Hallmarks

There will be opportunities—some blatant, some seductive—for you to lose your integrity every day. The adversary will see to that. It may be the lure of compromising your principles of honesty: the chance to make a somewhat soiled dollar in a somewhat shady deal. Or it may be the temptation to break one of the other moral laws: to lie a little, cheat a little, or be a little dishonest, to have just one drink, or to be unfaithful to your spouse just once. Almost always the temptation will come wrapped in glitter and gloss, dressed up to look like what it is not, the devil's counterfeit. And to the extent you succumb you will be weakened and deprived of your manhood or womanhood. The work of the Lord will be impeded, and the Devil will laugh. Conversely, as you rise above temptation, you will grow in spiritual stature and enjoy the approbation of good men and women everywhere. "Duty," said the great Confederate military commander Robert E. Lee, "is the most sublime word in any language. Do your duty in all things. You cannot do more. You should not expect to do less."

Duty achieves its highest expression when carried out within the framework of and adherence to a firm set of moral standards. Many observers have commented on the slackening of moral fiber in the Western democracies over the past several decades. In his celebrated commencement address at Harvard a few years ago, Alexander Solzhenitsyn drew attention to the most outstanding weakness of the Western democracies: their growing lack of courage. In Solzhenitsyn's view, this decline in courage is particularly striking among the ruling and intellectual elites. In part it may arise from having too many of this world's possessions, too easily come by. Those who remain courageous (and there are many) have little impact on public life.

"Political and intellectual functionaries," Solzhenitsyn continues, "exhibit depression, passivity, and perplexity in their actions and in their statements, and even more so in their self-seeking rationales as to how realistic, reasonable, and intellectually and even morally justified it is to base state policies on weakness and cowardice." Although Solzhenitsyn was referring primarily to political courage of the kind needed by national leaders, the courage of nations begins with the courage of individuals.

Courage is the great need of our time, courage to accept the ineluctable truth that greatness can never be achieved without adversity, that struggle is the prerequisite for growth. Edmund Burke taught this well when he said:

*Adversity is a severe instructor, set over us by one who knows us better than we do ourselves, as He loves us better, too. He that wrestles with us strengthens our nerves and sharpens our skill. Our antagonist is our helper. This conflict with difficulty makes us acquainted with our object and compels us to consider it in all its relations. It will not suffer us to be superficial.*

Yes, adversity is the refiner's fire that bends iron but tempers steel. It is in the fire of struggle and stress that greatness is forged. A measure of your greatness as men and women will be your response to adversity, the courage you have as you wrestle with problems that can strengthen your nerves and sharpen your skill, as Burke said.

Hastiness and superficiality have been termed the psychic disease of the 20th century. The pace of modern life, which seems to grow more frantic each year, penalizes thoroughness and promotes haste. Society demands speed—speed at all costs, speed regardless of the consequences to the health and happiness of individuals, speed at the expense of diminishing supplies of irreplaceable resources. We demand instant communication, ever more rapid means of transport, faster decisions. Business deals are conceived in Toronto, planned in Edmonton, and consummated in Vancouver or New York or Tokyo, all in a

few hours time—but not without a price being paid. Often the price is tragically high: anxieties that must be calmed with tranquilizers or alcohol, children who grow up not knowing their father (or, increasingly, their mother), and lives spent in acquiring rather than giving.

It will take courage for you to step far enough away from the glamour and excitement of the speedway of life to see it for what much of it really is: a poor, tawdry counterfeit of what life can be. I for one am delighted to note that increasing numbers of people are doing just that, deciding that the game isn't worth the candle, and that there are more important things to do in this world than to act like a speeded-up version of the Roadrunner. I can't tell any of you, nor would I wish to, what speed to run your life at. All I ask is that you be honest enough to take a hard look at what you really want and courageous enough to act on your decision, even if it means fewer material possessions and less worldly acclaim.

Finally, I remind you that the final stage in the development of an exceptional professional is that of teacher and mentor of the next generation—the young men and women just entering the profession and in need of the example and guidance of those who have already scaled the heights and who are the skilled practitioners of their craft. Law school provides the intellectual framework for the practice of law, but does little to actually teach students how to be lawyers. That is done as the new graduate learns the realities of practice at the knee of one who is more experienced.

Each generation has a solemn obligation to give a helping hand to those coming behind, who will in their turn be the carriers of the torch. A profession that loses that vision has at best an uncertain future.

The choice is clear: If you want to do more than exist, if you want to soar as on eagle's wings to the outermost limits of your potential as a human being, you must pay the price. That price is an amalgam of discipline and desire, lightened by hope and love, bound together by the steel hoops of work and service, tempered in adversity, undergirded by faith, and overlaid with courage. This is your challenge, and I send you forth to accept it.

# James Claflin in *A Man for All Seasons*

by Scott W. Cameron

Commenting on his recent portrayal of Sir Thomas More in the BYU production *A Man for All Seasons*, James Claflin, '91, proclaims, "It was the greatest theater experience I have had." A criminal defense lawyer in Salt Lake City, James' interest in theater began at Orem High School, where it took only one drama class to discover that his ability matched that interest. Following high school, he accepted a scholarship in theater to BYU, fully intending to enjoy his education and then attend law school.

During his sophomore year at BYU, however, James became convinced that he had to choose a "real" major to prepare for law school, that is, until he heard Bruce Hafen speak to undergraduates interested in law. Dean Hafen indicated that law schools admit students from every academic discipline and that performance within the discipline was more important than the type of discipline. He also told the students that if they had a passion for something, they would excel at it. This was enough incentive for James to renew his theater scholarship and to appear in at least two BYU dramatic productions each of his next three years.

For two years law school intimidated James enough to keep him from auditioning for any plays. However, by his third year, with an offer at the Phoenix firm of Brown & Bain firmly in hand, he accepted the part of Stanley, opposite his brother, Scott, as Eugene, in the BYU production of Neil Simon's *Broadway Bound*. The play



Mark Philbrick

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won a berth in the Irene Ryan American Collegiate Theater Festival held at the Kennedy Center in Washington, D.C. Immediately following his law school convocation at the Provo Tabernacle, James flew to Washington, D.C., to perform in the play. He won the Best Scene Partner Award at the competition, and his brother won the Best Actor Award.

After two years in Phoenix at Brown & Bain and hoping for more trial experience, James moved his family to Salt Lake City, where he worked first with Berman & O'Rourke and then with Scalley & Reading. He now does predominantly criminal defense work as a solo practitioner. Commenting on his work, James indicates his love of his constitutionally-based practice, which compensates for being a part of a criminal defense bar that is often misunderstood. Using skills of oratory worthy of Sir Thomas More, he knows that "it was a criminal defense attorney that would have represented Joseph Smith." Also commenting on trial practice, James indicates that it provided him with a "final bit of growing up."

Law is a demanding profession, and eight years had passed since James' last performance. Another eight years might have gone by were it not for the loving intervention of his wife, Amy. She encouraged James to audition for a role in *A Man for All Seasons* and further encouraged him to take the role once it was offered. Amy did this knowing she would be taking care

of their five children—Stephanie (11), Christopher (9), James (7), Samantha (4), and Brett (6 months)—single-handedly for several months while James was in rehearsals. James refers to this opportunity as "Amy's gift to me." She sensed that he would be happier with the opportunity to act and knew that it would be a chance for their children to see an additional side of their father's personality.

When asked what it was like to play the part of Sir Thomas More, as interpreted by Robert Bolt, James responds, "I feel forever better, forever improved for having been so intimately connected with such a great piece of work." As a family man, James feels he had an advantage in interpreting More. He understands that for the sake of "principle," More made a choice that was not in his family's best material interest. James discussed the difficulty of keeping the first scene light, knowing how somber the second scene becomes. It is also a challenge to play a "saintly" man who would not see himself in that way.

Pondering the depth of More's integrity, James feels that his own lawyering has changed slightly. He indicates that he now pays even closer attention to principles and how they guide his life. He has an increasing consciousness that situational ethics are corrupt ethics, that following guiding, immutable principles is the only antidote to the claim that one must wear different hats for different roles.

Having developed such profound feelings for More, James longs for other oppor-

tunities to play heroes. He comments that he could learn so much from playing a character like Captain Moroni, knowing that in the portrayal he would come to know the character and hence have a more profound sense of the character's goodness. This tribute goes to both More and Bolt, for it is Bolt who clothes More's sainthood with the appropriate cloak of speech.

The play provided another opportunity for James to play opposite his brother, Scott, who played the part of Thomas Cromwell. James and Scott Claflin have the good fortune of being brothers and closest friends. According to James, the opportunity to work with his brother for the first time since *Broadway Bound* was a singular pleasure.

Among the lines James grew to revere in Bolt's play was More's stinging rebuke of Richard Rich who perjured himself and betrayed More in exchange for a governmental position in Wales: "It profits a man nothing to give his soul for the whole world." This became the line printed on the cast T-shirt for the production. A mind filled with expressive lines as well as a keen sense for the goodness of Thomas More are two of the benefits carried from the production.

James vowed it will not be another eight years before he acts in another play. This trial attorney/thespian has finally accommodated two important parts of his personality. For those of us who have observed his acting, this accommodation is one to be congratulated.

# John W. Welch: Safe at Home

by Carl Cranney



While visiting a reception for the board of visitors at Associate Dean Kathy Pullins' house, Professor John W. (Jack) Welch was amused to see that the Pullinses' welcome mat was an old home plate. (Kathy's husband is the dean of baseball coaching at BYU.) Kathy explained that they wanted people to feel "safe at home."

For Jack, "home" for many years has been the J. Reuben Clark Law School. "The Law School has been a wonderful 'home base' for the many projects I am involved in," he says. As founder and former president of FARMS (Foundation for Ancient Research and Mormon Studies), editor of *BYU Studies*, and a teacher of several different classes, his projects may include anything from editing poetry for *BYU Studies* to displaying ancient Babylonian law tablets. He also has served on the *Encyclopedia of Mormonism* editorial board and is currently working on myriad projects, including monitoring FARMS' work on volume 14 (of 20) of *The Collected Works of Hugh Nibley*.

Jack was instrumental in bringing the Masada exhibit to BYU in 1997. Originally, he conceived the idea while visiting the Archaeological Institute at the Hebrew University in Jerusalem on Mount Scopus. Arranging the preliminary legal contracts alone took nearly three years, but the reward was well worth it. According to Jack, the Masada exhibit was an "extraordinary and memorable part of my academic experience." More than 175,000 people visited the popular exhibit during its six months at the BYU Museum of Art.

Jack spends about half his university time with the Law School, and he occupies the remaining time with various projects that are assigned him by the university, such as serving as editor of *BYU Studies* for the past eight years. *BYU Studies* is a quarterly LDS journal featuring articles, essays, art, poetry, book reviews, and bibliographies dealing with academic subjects of interest to Latter-day Saints. Besides the journal, *BYU Studies* also publishes books and resource materials.



With *BYU Studies* celebrating its 40th anniversary this year, Jack feels that “40 years in the wilderness is long enough. There are still people who don’t know about us. The information we publish is exciting. It’s new. It’s not the same old stuff. We’ve got new documents coming out, new research that’s being done, new questions being asked.”

Another of Jack’s current projects includes a book he has been working on intermittently for 20 years that deals with the legal trials in the Book of Mormon. In the book, he examines and analyzes the trials, legal issues, procedures, and precedents set by the cases.

The university also keeps Jack busy teaching several classes. He teaches a class on ancient Near Eastern and Biblical law that primarily deals with legal issues to 600 B.C. The class is a springboard for studying law in the Book of Mormon. (After all, Lehi’s party did leave Jerusalem about 600 B.C.) *Masada and the World of the New Testament*, published by *BYU Studies*, serves as a textbook for the New Testament class he co-teaches with John Hall. At the Law School, Jack also teaches nonprofit and corporate tax courses. When asked why someone who had studied Greek philosophy in the original Greek at Oxford had become a tax lawyer, his reply was, “If there is anything I have read that is similar to reading Aristotle in Greek, its reading the complex regulations under the Internal Revenue Code.”

Jack writes prolifically. Every day he tries to block out time for writing. His list of published books and articles, from the Jewish Law Association Studies to the *Ensign*, is exhaustive. Since 1969 he has published more than 125 articles, books, reviews, and papers.

“You’ve not really thought about something until you’ve written about it,” says Jack. “I like the discipline and the self-discovery that goes on in the writing process. How do I really know what I think until I’ve written it out and examined and critiqued it? It’s an enriching process of self-discovery and adventure into terrains that I’ve not explored very thoroughly before. I like thinking of things in new ways, putting old pieces together in ways that open up new perspectives on old, familiar subjects.”

Much like when he was practicing law, Jack still writes on the run. “You never know when the Muse will sit on your shoulder,” he says. If he is driving and has a thought, he will pull over to the side of the road and write a paragraph. Since he believes in a collaborative model of scholarship, he uses many different people to help edit and critique his writings, from his students to fellow editors and professors.

Even the family trip seems to transform into written metaphors. Recently Jack and his family hiked the Grand Canyon from the north rim, a 28-mile round-trip. He says, “I found the whole hike down . . . a metaphor of descending into mortality and back up, returning to where we started—but not without a lot of pain.”

Jack’s strong drive comes from his love of what he does. “I love exploring old subjects. I love the challenge of reexploring old subjects and thinking through and figuring out as much as I can about a topic,” he relates. “When I get up in the morning I don’t ever say to myself, ‘Darn, I’ve got to go to the Law School this morning.’ I just love it.”

Yes, Jack still finds time for an active Church life. Recently released as the first counselor in the *BYU* 14th Stake presidency, he now teaches the high priests and a course in temple preparation. But his most critical calling, he says, is as the executive assistant to the Relief Society president in his ward (his wife, Jeannie).

Jack deeply believes that “someday we will all be asked, in the Final Judgment, what we’ve done with the talents we’ve been given. How have we used them? How have we developed them?” He expresses, “I think that these things are not given to us for our own amusement or to satisfy our own curiosity but to do good in the world. My great joy in this work is thinking that someone out there might read and benefit from anything that we publish at *BYU Studies*, in the Law Review, at *FARMS*, or other places.”

The Law School has served as a good home base for Jack Welch. “So much of what I do radiates out from the approaches and the latitude that I have as a professor here,” he says. “I really do feel ‘safe at home.’”



# William Ka'ua'iwi'ula'okalani Wallace III

## The Caretaker of the Bones of His Ancestors

by Scott W. Cameron

*a*fter more than 40 years, William K. Wallace III, '84, is finally growing into his middle name, *Ka'ua'iwi'ula'okalani*, or "the red bones of the heavens." "In 1994 Wallace went with his cousin, a member of the Oahu Burial Council, to Kokololio Beach Park in Hauula to rebury some ancient bones that had been unearthed. Wallace recalled that when he reached for the bones, 'Suddenly I could hear my grandmother's voice ringing in my ear. She said, "Now you are beginning to understand the purpose of your name."' . . . Wallace realized his grandmother had given him a name he could not elude . . . Ka'ua'iwi'ula'okalani, [which] loosely translated, means 'the caretaker of the bones of your ancestors.'"¹

Wallace and his cousin, Cy Bridges, cultural island director at the Polynesian Cultural Center, were both Mormon bishops at the time. They believed that the power of the priesthood made them sensitive to their responsibilities. Wallace said that, as he climbed into the hole that had been excavated and approached the bones, in addition to the prompting from his grandmother he could hear the voice of a young girl singing. After gathering the bones in a traditional woven basket, he told archaeologists that the bones belonged to a young girl who was buried next to her father. A week later an archaeologist came back to Wallace and verified that their tests showed that the bones, in fact, belonged to a young girl of six or seven years and that the other bones were of a mature male. Since this first incident, Wallace and Bridges have been involved with the reburial of the remains of 80 individuals whose

bones have been uncovered by developers over the past decades and deposited in boxes in the Bishop Museum in Honolulu.

Although not the first alumnus to leave full-time law practice for other pursuits, Wallace's choice of careers, preserving Hawaiian and Polynesian culture and language, has certainly been one of the most interesting, and his reason for leaving one of the most compelling. During law school he could not have predicted his career path. He spent his first two years after graduation as assistant attorney general in American Samoa. He then returned to Hawaii and for four years built his own general practice, specializing in criminal defense. At the conclusion of his first major securities fraud defense trial, where the jury held for his client, he thought his practice was on the high road to success. However, his mentor from the history department at BYU—Hawaii, Dr. Kenneth Baldridge, had another idea. Baldridge told him that BYU—Hawaii needed a center for the study of Hawaiian and Polynesian culture and that Wallace was the person to head it up. Although it did not seem logical, in his heart Wallace felt that he should accept.

In joining the faculty to chair the Center for Hawaiian Language and Cultural Studies at BYU—Hawaii in 1992, Wallace realizes that he was responding to feelings of kinship with his ancestors. He does not feel that he has abandoned law, but he has spent the past seven years developing and teaching courses in Hawaiian and Pacific Island studies, Hawaiian language, Hawaiian history, and the history of Polynesia. He has also



developed a passion for research projects with upper-division students ranging from cultural studies to environment studies, from traditional family practices in a modern setting to native Hawaiian sovereignty. One of his recent projects has been to develop a course in land stewardship and responsibility, in which the students learn to plant and care for *taro*.

Wallace teaches his students as he, in turn, was taught by his grandfather, William Sr., that planting is to be done with prayer: “William Sr. often wrapped his grandson in a blanket and carried him outside into the pre-dawn chill to let the child watch as he planted. The senior Wallace would rub soil tenderly into each plant’s roots, lift it to the sky and pray aloud, “*Kokua, kokua, Ke Akua*,” or “Please help, Father God.”<sup>2</sup>

Although the connection between cultural studies and law may seem tenuous, Wallace has used the skills he acquired in law school on a daily basis. He is no longer engaged in white-collar criminal defense, but he continues to handle cases involving abused and neglected children. He has served as a *guardian at litem* and consulted with the courts regarding the cultural relevance of the service plans in cases involving Tongan, Samoan, and Hawaiian families. He has been asked to speak several times at judicial conferences on cultural perspectives.

Wallace has combined his knowledge of dispute resolution with his cultural sensitivity to achieve favorable results. For example, recently there was need to expand the wastewater treatment plan in Laie. The plan was vehemently opposed

by some people, because it was adjacent to an ancient Hawaiian temple, or *hei’au*, located on the campus of BYU—Hawaii. Wallace helped craft an agreement whereby the treatment center would be built and the *hei’au* would be restored. Because of his knowledge of Hawaiian culture, he was able to act as mouthpiece for the elders in the community, the *kapuna*, in allowing the project to move forward. The restoration of the *hei’au* will provide BYU—Hawaii with the opportunity to demonstrate its desire to preserve both Hawaiian culture and its sacred past.

In acting as a bridge between his current students and their Polynesian ancestors, Wallace feels that he has not only been caring for the bones of the dead, he has also been caring for the bones of the living. As his students have learned from their past and have grown to reverence the land and the ocean and the culture that has grown from them, Wallace has been caring for their bones as well. By example, he has also taught that the study of law can be an asset in solving problems wherever they might arise. His students at BYU—Hawaii may have affectionately called him “Uncle Billy,” but to his friends at the J. Reuben Clark Law School, Wallace will be remembered as distinguished graduate William Ka’ua’iwi’ula’okalani Wallace III, Esq., the “caretaker of the bones of his ancestors.”

<sup>1</sup> Esme M. Infante, “What Makes Us Ohana—A Tapestry of Peoples,” *Honolulu Advertiser*, February 22, 1999.

<sup>2</sup>*Ibid.*, 3.



# BYU's National Moot Court Champions

by LoAnn Fieldsted

When Jonathan Boyd, Maren Daines, and Dawn Hendrickson, second-year law students at the J. Reuben Clark Law School, flew to New York City on March 4, 1999, to compete in the 24th Annual Irving R. Kaufman Memorial Securities Law Moot Court Competition, they looked forward



Dawn Hendrickson and Jonathan Boyd

to the week with eager anticipation. They didn't know what the next few days would bring, but they did know what they wanted. "All of us on the team from BYU wanted to do well, not only for ourselves but for Brigham Young University and for the J. Reuben Clark Law School," says Jonathan. "We all feel very strongly that we have a great law school, and we wanted to make sure, if we could, that the impression we left with our competitors and with the judges in New York was favorable." When the BYU team left New York City after four

days of intense competition, they not only left behind a favorable impression but they took with them first-place honors.

The Irving R. Kaufman Memorial Security Law Moot Court Competition is held each spring at Fordham University School of Law in New York City. The Kaufman Competition is an interscholastic moot court competition that focuses on legal issues in federal securities law. It is held in honor of Judge Irving R. Kaufman, a Fordham alumnus who served on the United States Court of Appeals for the Second Circuit for many years, including a seven-year tenure as chief judge. The Kaufman Competition is well respected among practitioners and law schools and attracts a nationwide audience. This year, representatives from 30 schools throughout the United States and Canada participated. In order to compete in New York City, the BYU team argued in moot court competitions for almost two years. During winter semester of the second year, the scores from both years of competitions were weighted to determine the team who would represent Brigham Young University at the national competition at Fordham University.

The BYU team knew they would face tough competition in New York City, and they also knew the judges would be demanding critics. Preliminary-round judges at the Kaufman Competition included, among others, experienced securities litigators from top New York City firms, law school professors, Securities and Exchange Commission practitioners, and legal in-house counsel at investment banks. The semifinal round panels consisted of partners from top law firms involved in securities and Internet legal issues. In addition, this year the competition was honored to have Justice Antonin Scalia of the United States Supreme Court, Judge Joseph McLaughlin of the Second Circuit, and Judge Ilana Diamond Rovner of the Seventh Circuit presiding on the final-round panel. Maren Daines appreciates the opportunity she had to argue before such distinguished panels of judges and feels the moot court experience is of great value to law students. She says, "Because of moot court competitions, I was able to argue before U.S. Supreme Court justices



two times this year. These are memories I will treasure for the rest of my life. Not many get to have this experience, and I realize these are opportunities I may not have again.”

But having this once-in-a-lifetime opportunity did not come without preparation and hard work. The BYU team hefted a stack of 30 briefs onto the plane in Salt Lake City, one from each school that was participating in the competition, and spent the five-and-a-half-hour plane flight poring through each brief and bouncing ideas off each other. Throughout their stay in New York City, the dedicated law students continued to work. In fact, they didn’t take much time for sightseeing, even though their hotel was situated in a great tourist location near Central Park and Times Square. Dawn Hendrickson recalls, “None of that mattered in the end, since we worked in our hotel rooms all day, taking fresh air only to grab a bite to eat or traverse the one city block to participate in another round of competition.” Jonathan Boyd adds, “When you keep winning and advancing to the next round, the little time you have between rounds is too precious to be spent on sightseeing. Our team argued six times in four days. It was an oft-repeated cycle of preparation, performance, and critique that never seemed to get any easier, regardless of how many times we did it.”

Though the BYU law students found the week of preparation and competition stressful, the team members also saw a positive side of their experience. Maren relates, “Not only did we have the opportunity to represent our school, but this intense experience of arguing and preparing every day, developed our skills—skills that will be valuable in our future practices.”

The BYU team knew there were six total rounds of competition, including the final round, but didn’t anticipate advancing all the way to the finals. “If we had,” Dawn says, “the task would have seemed overwhelming at that point.” In fact, each night Jonathan would tell his teammates that if they didn’t advance, he would fly home the next day to be with his wife, who had just given birth to their baby the previous week. But

Jonathan didn’t go home. The team kept advancing, taking it one day at a time, one round at a time. Dawn remembers, “A fleeting moment of joy rushed through me each time our team was announced, followed by a rush of stress as I realized that meant preparing all over again. The most exciting part of the competition was hearing our school’s name, Brigham Young, announced round after round, especially in light of the fact that many schools present at the competition were unaware that BYU even had a law school, and also knowing that partners in large New York City securities firms were present as judges and were just getting familiar with BYU as a competent law school.” The team members were well aware that they were helping to build BYU Law School’s reputation.

And build that reputation they did. After the BYU team had advanced through the preliminary rounds, the round of 16, the quarter finals, and the semifinals, it was announced that BYU would face Wake Forest in the final round. The BYU law students knew they had a lot to do to get ready for the event. Two of the three team members would compete the next day, and they had a big decision to make. Jonathan had competed each round arguing Issue One, so they determined that he should continue arguing. Maren and Dawn had alternated arguing Issue Two in the preceding rounds. Dawn argued the petitioner side, and Maren argued the respondent side. As the coin tosses had fallen, they had argued petitioner four of the five rounds, so Dawn had done most of the arguing at that point. Now, in the final round, they had been assigned to the side of respondent. Maren felt, though, that Dawn should argue, since she had argued most of the rounds and because she had already had the opportunity to argue before a U.S. Supreme Court justice, Justice Clarence Thomas, a few months earlier at a moot court competition held at BYU. In the spirit of teamwork, Maren selflessly relinquished the opportunity to argue before Justice Scalia and told Dawn to step in.

The final round was intimidating. When the justices entered the room, Dawn says she was amazed to see they

looked like ordinary people—people with big titles, but still just ordinary people. As soon as the competition began, however, they no longer seemed so ordinary. They roasted each of their opponents, forcing them to rescind earlier statements or to admit they simply didn’t know something. Dawn says, “Jonathan argued third and answered their questions like a master, unshaken and confident.” Jonathan felt it was a unique experience to argue before Justice Scalia and says, “His questions were detailed and focused, and he expected answers that made sense. He isn’t the type to let you off the hook if he asks a hard question—you’ve got to answer the question, one way or the other. The other judges on the panel were equally tenacious with their concerns . . . and no oralist got off easy.” Dawn presented her arguments last, and after she finished, she says, she felt uncertain whether they had won. When the judges emerged from deliberations, however, they announced Jonathan Boyd as Best Oralist and Brigham Young University as Best Team, an honor that would make any law school proud.

The BYU Law School is indeed proud of these students. Not only did they help build the reputation of the J. Reuben Clark Law School by winning a national moot court competition, but they represented BYU and the Church in a positive way. Dawn recalls that “throughout the competition, many individuals from other schools and judges for the competition asked about Brigham Young, the honor code, the Church, and our standards. We were pleased to be ‘ambassadors’ from BYU.” These remarkable students are also grateful for the opportunity the Law School gave them to compete in moot court competitions. Maren states, “It would be much more difficult to hone our advocacy skills without this opportunity. We are grateful that money is set aside for this purpose. It’s interesting to see ourselves compete against other schools—to see the skills of others and to learn from their techniques.” It’s clear, though, that other moot court competitors can learn a thing or two from the award-winning team representing BYU.

## Professor Larry EchoHawk to Serve on National Council

Larry EchoHawk, a professor at the J. Reuben Clark Law School, was recently appointed by President Clinton to the National Coordinating Council on Juvenile Justice and Delinquency Prevention. Attorney General Janet Reno is the chair of the council and makes recommendations to Congress and the president each year. The council coordinates all federal programs that care for unaccompanied juveniles or relate to missing and exploited children. It examines how separate programs can be coordinated among federal, state, and local governments to better serve at-risk children and juveniles.

Professor EchoHawk believes that the recent killing spree by two teenagers at Columbine High School in Littleton, Colorado, will undoubtedly intensify the work of the council. He expects it will examine issues relating to what causes teenagers to act so violently, what can be done to identify dangerous youth in advance, whether something more can be done to keep guns and bombs out of the hands of teenagers, and how to better safeguard children attending schools.

EchoHawk feels that the council will formulate recommendations to Congress for enactment of new laws to address these important issues. Council members may also be called upon to testify on various bills that may be considered by Congress. "I look forward to participating in these discussions," EchoHawk says. "I am particularly interested in trying to find ways to lessen the exposure our children have to violence on television, video games, and the Internet."

Juvenile-related issues are not new to EchoHawk. Prior to joining the Law School faculty in 1995, he served as Idaho's attorney general from 1990 to 1994, where his responsibilities as a poli-

cymaker often focused on juveniles. As a Bannock County prosecuting attorney from 1986 to 1990, he was responsible for juvenile cases in Idaho's fourth largest county. Before that, he was a member of Idaho's House of Representatives. From 1977 to 1986 EchoHawk was chief general counsel for the Bannock-Shoshone tribes, serving as special prosecutor for the Navajo Nation in 1985. He has also served on the boards of American Indian Services and the Land and Water Fund of the Rockies and as vice president of the National Association of Attorneys General. He received a bachelor's degree from BYU in 1970 and a JD degree from the University of Utah in 1973.

Because of his background as a policy-maker, prosecutor, and professor of criminal law and criminal procedure, EchoHawk has been contacted by the White House

Personnel Office several times over the past years to take full-time positions. Each time he has declined because of his work at the Law School. However, the appointment to serve on the National Coordinating Council on Juvenile Justice and Delinquency Prevention interests him, not only because it is a part-time position but because of the issues the council focuses on. Commenting on his

appointment to the council, EchoHawk says, "I hope to use the experience I have gained as a county prosecutor, state attorney general, and criminal law professor to try to improve how the resources of the federal government are used to address the growing problem of juvenile violence in America. I also have a special interest in addressing the factors contributing to the increase in juvenile violence and delinquency occurring within Indian reservation communities. Hopefully, this experience will lead me to do legal research and writing in the area of juvenile justice." Professor EchoHawk began his appointment in March and will meet with the council quarterly in Washington, D.C.



## Clark Memorandum Draws Awards

Continuing a tradition of strong graphic design and content, the magazine of the J. Reuben Clark Law Society and the JRC Law School has earned prestigious awards from three organizations for its 1998 publications.

"For its creative design, excellent use of resources, and substantive content," the *Clark Memorandum* received a silver medal in the special constituency magazines category of the 1998 annual Council for the Advancement and Support of Education (CASE) Circle of Excellence Award Program. The national award was the highest given in its category this year and honors the spring/summer and winter issues. CASE also applauded the magazine with gold and silver medals for editorial design of two feature spreads in the winter issue, designed by David Eliason.

The *Clark Memorandum* received a Copper Ingot Award from the Salt Lake City Chapter of the American Institute of Graphic Arts (AIGA). The award, one of 10 chosen from the 100 best pieces of design and advertising during the year, distinguishes the overall design of the spring/summer issue by Linda Sullivan.

In addition, the publication received a Merit Award from the Society of Publication Designers during its 34th annual competition. Selected from more than 7,500 worldwide submissions, the spring/summer and winter issues of *Clark Memorandum* are showcased in the SPD's Publication Design Annual and Exhibition in New York City. The full-color, 266-page annual contains the work of the graphic industry's leading designers, photographers, and illustrators.

The SPD award recognizes the cover of the spring/summer issue, designed by Linda Sullivan, and a feature spread of the winter issue, designed by David Eliason with photography by John Snyder.

**Clark Memorandum**

J. Reuben Clark Law Society

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