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Clark Memorandum

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Law School
Brigham Young
University
Fall | 2000

The Trial and Death of Jesus



Cover Artwork:

A Staff Among Spears, 1977,

by Alex B. Darais.

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Latter-day Saint
Reflections
on the Trial and
Death of Jesus
John W. Welch



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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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Latter-day Saint
Reflections
on the
Trial and Death
of Jesus

by John W. Welch

NO SEQUENCE OF EVENTS IN LEGAL HISTORY HAS PROVEN M
ALL THAT TRANSPIRED FROM THE TIME THAT JESUS WAS ARRE
THE TIME HE WAS TAKEN AND CRUCIFIED ON A SMALL OUTC

Of the numerous things that could be said about the so-called trial and the death of Jesus, I want to emphasize 10 personal reflections. These 10 points center around two perplexing questions: Why was Jesus killed? and Who was responsible? As the world marks the 2,000th birthday of Jesus Christ, it would seem especially appropriate to think about his death, since “for this cause came [he] into the world” (John 18:37).

REFLECTION 1 | Latter-day Saints and all people should approach this subject with humility and cautiousness. It will long remain impossible to give a definitive description of the so-called “trial of Jesus.” Too little is known today about the laws and legal procedures that would have been followed in Jerusalem during the second quarter of the first century A.D., and too little is known about all that was done so long ago for any modern person to speak with any degree of certainty about the legal technicalities of this case. As Elder Bruce R. McConkie has written, “There is no divine *ipse dixit*, no voice from an archangel, and as yet no revealed latter-day account of all that transpired when God’s own Son suffered himself to be judged by men so that he could voluntarily give up his life upon the cross” (Bruce

R. McConkie, *The Mortal Messiah* [Salt Lake City: Bookcraft, 1981], 4:142). We are usually more glib about this subject than we intellectually or spiritually ought to be.

REFLECTION 2 | What is it that makes it so hard to be definitive about the trial of Jesus? Many things contribute to our perplexities. As just one example, we would like to know more about the legal rules followed by the Sanhedrin in Jesus’ day. Of course, we know much about Rabbinic law from the Talmud, but the Talmud was written later, from the second to the fifth centuries A.D., by the Pharisees or their successors, and so the Talmud presumably reflects the rules preferred by the late Pharisaic movement. Moreover, the Pharisees were not in control of the Sanhedrin at the time of Jesus; the Sadducees were decidedly in the majority. And we know that the Sadducees and Pharisees differed on a number of points of law.

We also wonder: Did they or didn’t they really have the authority to execute someone in a case like that of Jesus? The chief priests said to Pilate, “To us is not allowed to kill no one,” as the Greek reads in John 18:31, but we do not know why they lacked such authorization or why they

THIS TALK WAS DELIVERED JANUARY 8, 2000, AT A CONFERENCE IN PROVO, UTAH, ENTITLED “CHRIST, SAVIOR, SON OF GOD,” SPONSORED BY THE BYU COLLEGE OF RELIGIOUS EDUCATION. A MORE COMPLETE VERSION OF THIS PAPER, WITH DETAILED NOTES, WILL BE INCLUDED IN THE PROCEEDINGS OF THAT CONFERENCE TO BE PUBLISHED BY THE BYU RELIGIOUS STUDIES CENTER IN THE NEAR FUTURE.

ORE DIFFICULT OR MORE IMPORTANT TO UNDERSTAND THAN
STED EAST OF THE TEMPLE ON THE MOUNT OF OLIVES UNTIL
ROPPING OF ROCKS JUST OUTSIDE THE WALLS OF JERUSALEM.

would say this. Many possibilities come to mind. Perhaps they said this because no valid conviction had been reached allowing execution under their own law. Perhaps they were showing voluntary deference to Pilate. Or perhaps they simply needed Pilate's ratification. In any event, it would appear that Jewish people under Roman governance did have power, or at least took the power, to execute people on some occasions, as we see in attempts to kill Jesus in Nazareth or in the case of the woman taken in adultery, or in the deaths of Stephen or John the Baptist, none of which involved Roman authorities.

For reasons like these, it is hard to speak with any degree of certitude about the technicalities, especially any alleged illegalities, in the proceedings involving Jesus. Parenthetically, Protestants in the late 19th century so exaggerated the alleged illegalities that their analyses backfired, and many people concluded that such a fiasco or travesty of justice simply had to be a myth.

More difficulties arise from the significant differences between the four Gospels. John's account is very different from the accounts in the synoptic Gospels, and even between the synoptics significant legal differences exist. For example, did the council meet at night, as Matthew and Mark say (which probably would have been illegal), or did they meet only when day came, as in Luke (where that alleged illegality does not arise)? Or what about John, who mentions the council only before the arrest, never after? Matthew and Mark seem to place the ultimate burden on the Romans,

since it must have been Roman soldiers who led Jesus away into the Praetorium (Mark 15:16); but in John, Pilate gives Jesus back to the Jews "and *they* [the Jews it would seem] took Jesus" (John 19:16) and directed the crucifixion with Pilate's acquiescence.

Harmonizing these four Gospel accounts is possible, but only if one is willing to ignore their different purposes and irreconcilable jurisprudential details. Latter-day Saints are usually not troubled by the technical differences between these four New Testament accounts, but some people are. Jews, especially, are interested in how these texts are interpreted, because the trial of Jesus has been a major cause of antisemitism over the ages. In direct response to that antisemitism, which fueled the Holocaust, Jewish scholars have passionately argued that the Jews had nothing to do with the crucifixion of Jesus but that the Romans were completely responsible.

Latter-day Saints accept various versions of important events that do not always agree with each other. We live with four accounts of the Creation, three versions of the Sermon on the Mount, and several accounts of the First Vision. Latter-day Saints also appreciate that Matthew, Mark, Luke, and John each had different purposes and various audiences. For example, when writing to the Greeks, Luke never mentions any accusation of blasphemy, which to a Greek would not be consequential. (Indeed, in Greek, blasphemy can simply mean rude speech, and, thus, interestingly, in Luke it is the captors

who blaspheme, that is, speak insolently to Jesus.) Matthew, whose purpose is often to show how Jesus prevailed over the Pharisees, is the only Gospel writer to tell the story of the chief priests and Pharisees asking Pilate to secure the tomb in which Jesus was buried, but to no avail.

REFLECTION 3 | Even more problematical is the difficulty of determining intent. Why did any of them do it? *Why* was Jesus killed? Even today, the greatest challenge in modern courts of law is trying to prove a person's intent. Scholarly prudence and Christian charity behoove us to withhold casting any aspersions and to follow a more cautious, sensitive approach as we attempt to ferret out the motives of Caiaphas, the chief priests, or Pilate.

Actually, one may scan the four New Testament Gospels and find precious few explicit indications of what actually motivated any of these people. We may guess, of course, but our guesses are speculations. We may attribute to these people a wide range of political, commercial, social, personal, religious, or legalistic motives; but in most cases the motives that seem the most plausible *to us* stem from our own retrojections. Thus, it should not surprise us that scholars of the terrorist-bitten 1970s were quite confident that Jesus was executed as some kind of supposed guerrilla terrorist, while some post-Holocaust Jewish scholars of the 1950s argued that Caiaphas and his temple guards actually took Jesus kindly into protective custody to warn him about the Romans who were out to get him.



The chief priests [sought] Jesus' death after the raising of Lazarus.

Obviously, such theories are in tune with the sources of angst of the people who have propounded them.

Latter-day Saints are not immune from such inclinations. According to Ernest L. Wilkinson in 1966, the cause of the atrocious death of Jesus was none other than the concentration of "legislative, executive and judicial powers . . . in one unit, . . . in the Great Sanhedrin," in which Wilkinson expressly saw the ominous specter of Communism.

More commonly, Latter-day Saints assert that Israel's judges were motivated by hate. In 1915 the work of James E. Talmage portrayed the Sanhedrists as being galvanized against Jesus by "malignant," "inherent and undying hatred" (James E. Talmage, *Jesus the Christ* [Salt Lake City: Deseret Book, 1976], 627, 637). But the word *hate* is not found in any of the trial narratives per se.

Specifically regarding the motives of these Jews, Matthew and Mark only say that Pilate could tell "that the chief priests had delivered [Jesus to him] out of *envy*" (Mark 15:10); but notice that this is hearsay. And how did anyone know what Pilate was thinking? In any event, the word *envy* is not particularly antagonistic. It connotes jealous resentment of someone else's wisdom or good fortune, but scarcely does this common human emotion amount to lethal hatred.

Pilate's motivations are equally obscure. Some people see Pilate as a weak, incompetent, middle-management functionary who had recently lost his power base in Rome, who was easily intimidated, and who was manipulated by his wife. But this same Pilate, who usually resided in Caesarea and may have been cautious in handling Jesus in Jerusalem, still held in his hands the highest legal power of Rome in the area. He had not hesitated on other occasions to assert himself, even with military force. Having tried in several ways to get the chief priests to drop their complaint against Jesus, Pilate saw that nothing was working but "that rather a tumult was made" (Matt. 27:24). Physical violence—a riot—was erupting. When he tried to placate the crowd by giving them Barabbas as a "secure pledge," Pilate may have acted out of desperation, fear for his own safety, or equally out of hope that the crowd would disperse and leave Jesus alone. In fact, in the Joseph Smith Translation, Pilate *tells* the Jews to leave Jesus alone.

Returning to the point about hate, the Gospel of John makes it clear that *the world* (not just Pilate or the chief priests) would misunderstand, reject, and hate Jesus, just as it would also hate all of his true disciples. Jesus said: "But me [the world] hateth, because I testify of it, that the works thereof are evil" (John 7:7); "If the world hate you, ye know that it hated me before it

hated you" (John 15:18), for "I am not of the world" (John 17:14). In the cosmic conflict presented in the Gospel of John, this worldly hate of truth is the theological opposite of divine love; but that antipathy is too broad to provide a legal motive for killing Jesus, for it applies to all people, both then and now, who reject Jesus in any way, personally as well as legally.

In response to the question Of what crime was Jesus accused? there also is no simple answer. Blasphemy, sedition, encouraging tax protesters, and declaring himself a king are all mentioned, but none of these charges really stuck. But then, we are told that Jesus was arrested as a robber, and such outlaws were given no legal rights, let alone a Miranda warning or a formal arraignment. Even Pilate had to ask, "What is it these men accuse you of?" No one ever gave a straight answer. The Gospels in the end simply say that he was accused of "*many* things" (Matthew 27:13; Mark 15:3–4), leaving the legal issue intentionally vague, reminding us that precise, modern pleading practices were not necessarily followed in the ancient world.

The situation is very complicated. It is no wonder that uncertainty was a common reaction of the people to Jesus. At the conclusion of his temple speech on the Feast of Tabernacles, John says, "There was a division among the people because of him" (John 7:43). "Some said, He is a good man:

others said, Nay; but he deceiveth the people. Howbeit no man spake openly of him for fear of the Jews” (John 7:12–13).

REFLECTION 4 | When people get confused, they often become afraid. When they become afraid, they act irrationally. Although the factor of fear is rarely mentioned by commentators, fear provides the driving undercurrent that best explains the irregularities and vagaries of the so-called trial of Jesus. His trial was not a rational affair. Fear played a much larger role than we have stopped to realize. Sooner or later, *everyone* is afraid.

People who were sympathetic to Jesus were afraid of the Jewish leaders. The disciples fled from the scene of the arrest out of great fear. Even the powerful Joseph of Arimathea kept his loyalty to Jesus secret “for fear of the Jews” (John 19:38).

The chief priests also were deeply afraid. They worried that if Jesus became too popular, the Romans would come and take away “our place [the holy city, the temple, or the land] and nation” (John 11:48). But more than that, they feared Jesus. Mark 11:18 clearly states that after Jesus denounced the temple as a den of robbers, they “sought how they might destroy him: *for they feared him.*”

Their scheme to destroy him, however, seems to have gone quickly awry. After he was arrested, Jesus was treated like a hot potato, being passed spasmodically from one hand to another—hands “of *frightened* subordinates whose plans had gone astray,” as law professor Dallin H. Oaks wrote in 1969—with no one wanting to take the rap for either his death or his release.

They were not the only ones who were frightened of Jesus. When Pilate heard the words “he has made himself the son of God,” his reaction was fear. John states that Pilate “was the more afraid” (John 19:8). Even Herod the fox was said to fear the crowd.

Moreover, Golgotha, that scene of gruesome death, was a theater of fear. The centurion and those with him, when they felt the earth quake, “feared exceedingly” about what they had done. Phobias are everywhere in this story—far more than people usually think.

REFLECTION 5 | What were these people so afraid of? Above all, they were deeply afraid of the supernatural. Although the followers of Jesus accepted his miracles as manifestations of divine power, those who did not believe that Jesus was the Son of God found those wondrous works disturbing. A common reaction to the miracles of Jesus was fear, for if Jesus worked not by the power of God, he must have been possessed by “Beelzebub, and by the prince of the devils casteth he out devils” (Mark 3:22).

In Matthew 9 we read that Jesus healed a man who had been paralyzed by some kind of stroke. The King James Version of the Bible says that when the people saw this “they marvelled”; but the original Greek says that “they were afraid” (Matt. 9:8). When the multitude saw Jesus raise the son of the widow in Nain and heard the young man speak, their reaction again was sheer terror: “And there came a fear on all,” reads Luke 7:16. Fear of the extraordinary powers of Jesus, which nonbelievers saw as coming from the realm of the occult, explains much that transpired in his trials.

Personal manifestations of miracles or the glorious appearance of supernatural beings would probably evoke fear in most of us. The first words of an angel to Zacharias were, “Fear not.” Mary was told by Gabriel, “Fear not” (Luke 1:30), as were the shepherds in the fields. Even the apostles ran from the angel at the tomb, trembling, “for they were afraid” (Mark 16:8). When those disciples had assembled, the resurrected Lord’s first words to them were, “Be not afraid” (Matthew 28:10).

Imagine trying to arrest Jesus. The chief priests could not have undertaken this venture lightly and must have steeled themselves against the unexpected. Jesus was known to have amazing powers. He was a new Moses, and the chief priests were well aware of what Moses had done to Pharaoh and his army. Some of the chief priests had been involved in the attempt to stone Jesus when he “hid himself . . . , going right through the midst of them,” and escaped undetected (John 8:59). With Jesus known as something of an escape artist, people had their hands full trying to take him at the height of his power. It is no

wonder they needed to enlist the assistance of one of his closest followers.

If Jesus had the power to command loaves and fishes, to still the waves, to wither fig trees, and to order evil spirits, what powers might he use in defense of himself and his apostles? The raising of Lazarus, only a few days earlier, just over the hill from Jerusalem, brought Jesus' powers too close to the Holy City. It was then that the chief priests and Pharisees gathered in a council and said, "What do we [do]? for this man doeth many miracles" (John 11:47). This disclosure tells us that the deep root of their concerns was the fact that Jesus worked many miracles. If they were not miracles from God, then Jesus had to be some kind of trickster or sorcerer. Coupling these powers with what they considered to be his incantation against the temple (Mark 14:58) yields a potent formula for fear and trepidation and the need to strike quickly.

Even at his arrest, Jesus continued to call upon his miraculous powers. Jesus told Peter, "Thinkest thou that I cannot now pray to my Father, and he shall presently give me more than twelve legions of angels?" (Matthew 26:53); and when Peter cut off the ear of the high priest's servant, Jesus "touched his ear, and healed him" (Luke 22:51). Anyone in the group of arresters hearing or seeing these things must have been stunned. Moving forward must not have been easy.

Supernatural factors continue to play a dominant role up to the end of Jesus' life. People witnessing his crucifixion wondered if Jesus could save himself; they waited to see if the miracle-working Elijah would rescue him from the cross. Although that did not happen, the rocks split apart, graves opened, and holy spirits came forth out of the ground after Jesus' death (Matthew 27:51–53).

Behind everything lurked a strong undercurrent of fear, misplaced fear, that Jesus was an evil magician. In a significant revelation from the Book of Mormon, an angel announces that Jesus Christ would go about "working mighty miracles, such as healing the sick, raising the dead, [and] cast[ing] out . . . evil spirits" (Mosiah 3:3); but "even after all this they shall consider him a man, and say that he hath a devil, and

shall scourge him, and shall crucify him" (Mosiah 3:9). In the Book of Mormon, this is the proximate cause of the death of Jesus: not that he was a political threat, and not that some people disagreed with his doctrines, but that certain key people considered him to be of the devil. Latter-day Saints can relate. In 1879 an article appeared in the *Latter-day Saints' Millennial Star* comparing the death of Jesus to that of the Prophet Joseph Smith. In both cases, the "chief crime was that he obtained revelations from heaven." In both cases, divine power had been mistaken for magic.

Indeed, the chief priests worried to the bitter end that Jesus, whom they called a "trickster" (*planos*), would rise after three days, as he had prophesied. They worried that this, his last trick (*planē*), would be worse than his first. Their concern confirms the Book of Mormon text. Indeed, the word *planos*, in other early texts such as the Testaments of the Twelve Patriarchs and the Sybilline Oracles, can mean especially one who deceives through evil powers or spirits and fools even the elect through nature miracles, including churning up the sea or raising the dead. Obviously, being a *planos* could raise serious legal and religious concerns.

REFLECTION 6 | Was it possible that sorcery and necromancy could be considered criminal conduct in Jesus' day? Of course, certain forms of magic and wizardry were not legally problematical under the law at that time. Magicians such as Simon the Magician (see Acts 8:9) and Theudas, another wonder worker (see Acts 5:36), seemed to walk the streets freely. But when magic was used for improper purposes, it was severely punished.

Biblical law prohibited sorcery, soothsaying, and necromancy. Some knowledge of sorcery was even "a requirement to be appointed a member of the Sanhedrin," presumably so that such cases could be properly prosecuted. Leviticus 20:27 provides: "A man also or woman that hath a familiar spirit, or that is a wizard, shall surely be put to death." We have here the same words, "being worthy of death," that are used in Matthew and Mark to condemn Jesus as worthy of death. Having a

familiar spirit refers to "calling out of the earth" or conversing with the spirits of the dead (might one think of Lazarus?). Being a wizard has to do with giving signs or wonders, and Deuteronomy 13:1 made it a capital offense to use signs or miracles to pervert or lead people into apostasy. To some, the case of Jesus could easily, although erroneously, have presented a *prima facie* case of such conduct warranting the death penalty.

Likewise, Roman law at the time of Jesus outlawed certain forms of spell-casting or divination and made them punishable by death. In A.D. 11 Augustus Caesar himself issued an edict forbidding mantics from prophesying about a person's death. Such conduct had become a serious political and social problem in the Roman world. The main thrust of Augustus' decree was to expand the law of *maiestas*, which had long punished people who harmed the state by actions, to now include treasonous divination, especially augury directed against the imperial family. This "empire-wide imperial legislation circumscribed astrological and other divinatory activities everywhere," and we know of about one hundred trials for *maiestas* from the time of Tiberius alone. Later Roman law would specify that the punishment for enchanters or spell binders was crucifixion.

This is not to say that Jesus was crucified for predicting the death of Tiberius Caesar or anyone else, but it may explain why the chief priests thought they could get Pilate to take action against Jesus. If Jesus—who had been born under an unusual star and visited as an infant by magi (astrologers or sign-readers) from the east—spoke evil predictions against the temple and the lives of the Jews and prophesied about his own death, perhaps he would next lay spells on Caesar. If that were to happen, letting Jesus go would certainly make Pilate no friend of Caesar. In final desperation the chief priests argued that anyone who made himself a king "*speaketh* against Caesar" (John 19:12). All this looks like attempted allegations of *maiestas*.

Ultimately, of course, Pilate found no legal cause of action here. Jesus claimed that his kingdom had nothing to do with

The first words of an angel to...
the shepherds in the fields... were,
"Fear not."

Caesar's world, and Pilate was satisfied that the man from Nazareth had not broken any Roman law. But Pilate was still worried enough by the situation that he was willing to take action or to go along with Jesus' accusers.

Laws against sorcery are mentioned occasionally by commentators writing about the trial of Jesus, but this underlying cause of action is not usually taken seriously by them. No formal accusation of magic ever seems to be made during the trial. But, as Morton Smith argues, the term "worker of evil" used by the chief priests only in John 18:30, or its Latin equivalent *maleficus*, is "common parlance" in Roman law codes referring to a "magician." So the supernatural may well have had more to do with the death of Jesus than people think, just as Mosiah 3:9 indicates. This is not to say that other legal charges did not figure into the course of these proceedings. But concern over Jesus' mighty power best explains all that the Gospels report.

An underlying concern about demons would explain especially the puzzles of crucifixion and the lack of legal formalities. Since the publication of the Temple Scroll from the Dead Sea in the 1970s, many scholars acknowledge that hanging on a tree (or crucifixion) could serve as a

possible Jewish mode of execution. In one other notorious case a century before the time of Jesus, 80 witches were hung or crucified in Ashkelon without proper trials, because the Jewish court saw the matter as an emergency. This event shows that such things could happen, even if only rarely. Thus, both Romans and Jews (especially on an emergency charge involving a fear of demons) were capable of executing someone by crucifixion.

REFLECTION 7 | We can now turn to our second main question: Who killed Jesus? We can now realize that lots of people were involved. But before we answer this question, we must back up again and reflect on which of the four Gospels to favor, for again we get different answers from the different Gospels.

In giving weight to various statements, Latter-day Saints generally favor the report of the highest priesthood authority, which in this case is the Apostle John. With Peter and James, John was one of the highest ranking apostles. Matthew, the publican, was one of the Twelve, but Mark and Luke apparently were not.

Moreover, most people find more credibility in the testimonies of eyewitnesses, and it is not clear how Matthew, Mark, and Luke learned the details they



report. None of them were present for most, if any, of the proceedings surrounding Jesus' trial and death. Mark may have learned something from Peter, but after the arrest, Peter only "followed [Jesus] afar off" (Matt. 26:58) and stayed outside the door of Caiaphas' palace hoping to remain unrecognized. But John was present for the duration of the hearing. Significantly, he was the only disciple who actually "went in with Jesus into the palace of the high priest" (John 18:15), and, of course, John was there at Golgotha when Jesus entrusted his mother Mary into his care (John 19:26–27). Of the spear thrust, John testified: "And he that saw it bare record [gives solemn testimony], and his [testimony] is true" (John 19:35). In this affirmation, John distinctively speaks of himself as the *one* who saw, claiming for himself special status. Latter-day Saints do not take his witness lightly.

REFLECTION 8 | Latter-day Saints should be especially comfortable with the Johannine approach to the trial of Jesus, which is strongly supported and clarified by the Book of Mormon.

A key element in LDS doctrine is the knowledge that the sacrifice of the Savior was promised and foreordained from before the foundation of this earth, as we read in the words of Lehi, Benjamin, Abinadi, and Alma. Likewise, for John, the death of Jesus was a foregone conclusion from the beginning. It had to happen. It was supposed to happen. "For this cause came I into the world" (John 18:37).

John particularly wants his readers to understand that Jesus was not killed because of some offense against the temple or its economy, as many people conclude (especially from Mark). Here John is particularly interesting. Unlike Matthew and Mark, John does not have Jesus say either that *he is able* or *actually will* destroy the temple; rather, John 2:19 reads, "[If *you*] destroy this temple, . . . in three days I will raise it up."

People have also long puzzled over the distance that John puts between the cleansing of the temple and the death of Jesus. For John, the cleansing occurs at the very beginning of Jesus' ministry (see John 2:13–17), not after his triumphal entry

into Jerusalem. Why does John place it there? One reason is to introduce Jesus' prophesy of his death from the beginning; another is to show Jesus working at a cleansed temple, where he often went throughout his ministry.

Latter-day Saints understand that Jesus, the Holy One, was innocent of any crime. Indeed, in John's good news, Jesus was not convicted of anything. In John we find no mention of any Jewish court at all, let alone a verdict against him; and on this point I think John is right. Even in discussing the synoptic accounts, it is something of a misnomer to speak of the "trial" of Jesus. There was a hearing (maybe) or perhaps an inquiry or attempted deposition and the voicing of an opinion of how things "appeared" (as the Greek reads in Matthew 26:66 and Mark 14:64), but not a trial and verdict.

Latter-day Saints agree with John that an innocent Jesus died for the *whole* world, for all mankind, and that the *whole* sinful world in a significant sense brought about the death of Jesus. Look who arrests him in John's account: not just a group of men with torches, as in the other Gospels, but a cohort of soldiers, servants of chief priests and Pharisees (see John 18:3), and the commander or chiliarchos (see John 18:12). The whole world, it seems, was symbolically there. This seems particularly consonant with another important revelation extended to us by the Book of Mormon. Nephi prophesied: "And the *world*, because of their iniquity, shall judge him to be a thing of naught; wherefore they scourge him, [smite him and spit upon him] and he suffereth it, . . . because of his loving kindness and his long-suffering towards [all] the children of men" (1 Nephi 19:9).

REFLECTION 9 | If we need to find a precipitating culprit in all of this, the prime and persistent movers in the final actions against Jesus were probably only a small group identified as "the chief priests," the most powerful and best known officials of Jerusalem. An interesting pattern emerges by carefully examining every reference to these chief priests: It is the chief priests and scribes of whom Herod asks about the birthplace of the

Messiah. When Jesus prophesies about his death in Matthew 16:21, he mentions only the chief priests, elders, and scribes as being involved. It is the chief priests and elders who in the temple question Jesus' authority. The chief priests alone seek Jesus' death after the raising of Lazarus. Judas betrays Jesus to the chief priests. The chief priests alone demand Jesus' death before Pilate in Mark 15:3; and in the end, it is they who want the title to read, "*He said, I am King of the Jews*" (John 19:21).

Fourteen times in the Gospels and four times in Acts, the chief priests act alone against Jesus or his disciples. Eighteen other times they act together with the elders, rulers, captains, or the Sanhedrin. Twenty-one times they are associated with the scribes. Clearly the chief priests and these associates of theirs are the driving force behind the arrest and execution of Jesus. The Pharisees often debated Jesus and were verbally denounced by him, but they are mentioned much less often, and they lacked the political muscle of the Sadducean chief priests, whose party had a strong majority in the Sanhedrin. It is not hard to see that *small* group of chief priests as the one consistent force that agitated and militated against Jesus and his disciples. Their crowd was not large; certainly it did not contain all the Jews.

This subtle point is consistent with an important passage in the Book of Mormon. In 2 Nephi 10:5 it clearly says that it would be "because of *priestcrafts* [in other words, because of a small, powerful group interested in trafficking in religion for money] and iniquities, [that] they at Jerusalem will stiffen their necks against him, that he be crucified." The Book of Mormon by no means implicates or condemns all Jews.

In this regard, we should also remember the testimony of Paul. As a student of Gamaliel, Paul would have been well informed about legal events in Jerusalem, and he adds an important corroboration to this Book of Mormon position. The words in 1 Thessalonians 2:14–15 speak of Jews who killed Jesus. Notice the great importance of the punctuation between these words: should it read "the Jews who

killed Jesus,” with no comma (meaning the particular Jews who killed Jesus)? or should it read “the Jews [comma] who killed Jesus” (meaning that all of them killed Jesus)? This is the most famous punctuation mark in the world and is known as the “antisemitic comma.” But based on the Greek construction of this sentence, no punctuation mark should be there. Paul spoke only of those *particular* Jews who killed Jesus. Surely many Jews accepted Jesus. Peter was a Jew. Mary was a Jew. John was a Jew. Those in the crowds on Palm Sunday were all Jews.

REFLECTION 10 | Finally, especially for John, Jesus was in full control from the beginning to the end. At the beginning of his ministry, Jesus spoke of his death even to prominent Jewish leaders and others outside his circle of disciples. Speaking to Nicodemus, Jesus said, “Even so must the Son of man be lifted up” (John 3:14).

Consistent throughout his writing, John reports the death of Jesus with Jesus knowing exactly what was required to carry out the plan. When his hour had come, Jesus knew and “bowed his head, and *handed over* his spirit” (according to the Greek in John 19:30). Might it be significant that this same word is used three times in the story: when Judas betrayed or handed Jesus over to his arresters; when the Jews handed Jesus over to Pilate; and when Jesus handed over his spirit to God? For John, we must never forget that it is God who is voluntarily, purposefully, and knowingly dying as planned.

With all this as background, and knowing that much more work still remains to be done, we can now cautiously offer an answer to the question Who was responsible for the death of Jesus? For John and for Latter-day Saints, the whole world killed Jesus. As Nephi prophesied, the whole “world” would kill their God (1 Nephi 19:9). And if *everyone* was responsible, then, in an important sense, *no one* was responsible or to blame. Or if someone specifically were to blame, that is quite irrelevant for John, the apostle of love.

Of course, iniquity played its part. But, ironically, Greeks and pagans, for whom the gods could be found anywhere, were quite accepting of miracle workers.

The Jewish legal system, however—with its prohibitions against witchcraft, necromancy, and idolatry—effectively made the Jews (as the Book of Mormon says) the only nation on earth in which anyone could have cared enough about such supernatural conduct to have reacted with such hostility and to have “stumbled” against the very presence of their God in their midst, as Jacob says (Jacob 4:15).

In 2 Nephi 10:3–6 Jacob writes that it was “expedient” (which means pragmatically effective, “tending to promote some good end or desired purpose, expeditiously, quickly, and profitably”) that Jesus “should come among the Jews,” for “thus it behooveth [or was fittingly necessary for] our God.” Jacob identified that Old World location as “the *more* wicked part of the world,” with more wicked being a comparative between two places. From Jacob’s point of view, the question was whether Jesus should come to the Old World or to the New, and his answer is, to the Old, for its inhabitants would be more wicked than his posterity. He further explains, “And there is none other nation on earth that would crucify their God,” and I hasten to emphasize that this statement views this conduct in collective terms and does not infer that all people in that body necessarily agreed with their national leaders on this action. Continuing on, Jacob writes, “For should the mighty miracles be wrought among other nations they would repent, and know that he be their God.” We can indeed agree that such recognition would have been more easily given by people in cultures of other religions, where laws against such activity did not warrant the death penalty.

There may have been some miscarriages of justice in the trial of Jesus, but I do not think that John or Jacob want us to think of the death of Jesus that way. Jesus was not a victim. His death was supposed to happen. It had to happen. For this reason, God in his mercy does not come out and place blame on any single person or group of people. The writers of the New Testament Gospels were intentionally ambiguous. They could have been much clearer about who killed Jesus if they had wanted to be, but that was not

their point. Even in Judas’ case, we do not know what motivated him; things certainly did not turn out the way he had intended or expected.

In the final analysis, overwhelmed with irrational fear, all of them knew not what they really did. As Peter said only a few weeks later to those very people in Jerusalem “who killed the Prince of life,” “I [know] that through ignorance ye did it, as did also your rulers” (Acts 3:15, 17). Jesus forgave people as he hung on the cross, forgiving whom he would; and of us it is required that we forgive all people. Whereas God will judge, we are to judge not. Placing blame is not part of this picture. Masterfully understating all that happened, all Jesus said, out of the darkness to the Nephites, was, “I came unto my own, and my own received me not” (3 Nephi 9:16). Let us never forget that we also reject and crucify Jesus anew whenever we partake of the world and its darkness.

In his first general epistle, the Apostle John concluded: “And we know that the Son of God is come, [we have heard; we have seen with our eyes, and handled with our hands] and he hath given us an understanding, that we may know him that is true, and we are in him that is true, even in his Son Jesus Christ. This is the true God, and eternal life” (1 John 5:20 [1 John 1:1]). By reflecting carefully and cautiously on the events and causes leading up to the death of Jesus, one may more surely agree that he is indeed the Son of God, of whom the Book of Mormon and all the holy prophets have ever testified.

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PAGE 2 Rembrandt, *Ecce Homo*. © National Gallery, London. Used by permission.

PAGE 6 Rembrandt, *The Raising of Lazarus*. Courtesy Museum of Art, Brigham Young University. All rights reserved.

PAGE 11 Rembrandt, *Annunciation to the Shepherds*. Rijksmuseum, Amsterdam. Used by permission.

Basic





Mediation

A Play in Five Acts

Training

LEGAL-WRITING INSTRUCTOR JANE WISE TOOK
BASIC MEDIATION TRAINING AT THE LAW SCHOOL
THIS PAST SUMMER. THIS IS HER REPORT.

ILLUSTRATIONS BY JULIETTE BORDA

ACT I

It's a beautiful morning in June, and I'm sitting at the dean's conference table at the J. Reuben Clark Law School eyeing the 14 other mediation trainees. We'll be sitting at this table for 32 hours over the next four days listening to lectures, entering into discussions, and role-playing our way to CLE credit and a chance to participate as mediators on the court-annexed roster. The Schooley Mediation Program through BYU's LAWHELP sponsors this training for anyone interested. In other words, you don't have to be a lawyer.

Our group consists of five lawyers, three schoolteachers, two paralegals, a construction worker, two stay-at-home moms, and assorted others. A few of us are wearing tee shirts and jeans, but most of the trainees look like they are on their way to an office. It also looks like I am the only one who has been out of high school for more than 30 years.

Remember *A Civil Action*? It's a John Travolta movie about a cocky attorney who tries to take on giant industrial polluters on behalf of a small town where cancer-causing chemicals have been discharged into the water supply. The movie is based on a true story where the actual attorney ended up in personal bankruptcy because of the enormous costs of discovery in the nine-year, multimillion-dollar lawsuit he brought against the polluters.

Yes, he lost that one. But he is back representing small towns in polluted areas with a completely different approach to environmental law: he now mediates solutions between contending parties—no more expensive, time-consuming litigation for him. Negotiations take months instead of years, and settlements can be arranged without anyone admitting liability. His new theory is that aggressive litigation doesn't bring about the kind of dialogue that can solve problems. He is one of the many attorneys converted to mediation.

I became interested in mediation when my physician husband learned that "alternative dispute resolution" is being used by many health-maintenance organizations to resolve benefits disputes and improve services for its members. It seems that better solutions to health-care problems result when patients and providers work out their differences face-to-face in a nonadversarial forum. Patients feel they have more influence over the health-care system, and providers come out with a stronger commitment to making it work.

Picture this: Sitting eyeball-to-eyeball, a patient recounts the trying events that brought her to mediation while the physician listens intently. This, in and of itself, is a miracle. The physician apologizes and tries to resolve the problem within the safe and encouraging environment created by mediation, where new ideas can be fostered and attention is focused on feasible solutions. The benefits? This process is geared to fixing what is broken, and it's much cheaper than litigation.



ACT II

Our group is subdivided so that we can play a game entitled “Win as Much as You Can!” The object is to earn as many points as you can without hindering or helping the other group. We make our decisions based on what we think the other side will do, and we earn points by correctly second-guessing them. After several rounds we have an opportunity to talk to each other. Each side makes some representations to the other. We rely in good faith on the other group’s representations and follow to the letter what we said we’d do.

They withhold information and lie. We lose. “But we trusted you!” we shout. “We believed what you said!” “Better luck next time,” say the prevaricators.

Mediation, on the other hand, can combine conflict and trust and achieve positive results. In the *lingua franca* of specialists, conflict can be “constructive” rather than “destructive” if it involves “empowerment” and “forward movement.”

“The goal of mediation,” we are told, “is to use the conflict as a springboard for opportunity.” Constructive conflict (view-

ing conflict in a positive way) can lead to open dialogue, communication, and respect. It can lift morale.

This course of events only happens if the participants enter mediation in good faith—that means they are willing to work toward a resolution of their problem and lay all their cards on the table. If these ground rules are set, mediation offers things litigation can’t, such as the following:

1 Conflicting parties work “in the shadow of the law” (knowing what could occur if they went to court), but they are not necessarily bound by the law. They can work creatively towards solutions that would be impossible in a litigated courtroom setting. I saw this in a small claims court mediation where an auto glass installer promised to install a new windshield and take the other parties to dinner if they dropped their \$1,000 claim against him. It was the dinner that put that settlement over the top.

2 Opponents communicate directly rather than rely on attorneys. On the one hand, this discourse can foster feelings of amicability and empathy; on the other, it can result in a loss of good faith, which can quickly sink the ship. Mediators are prepared for this scenario. “Shuttle” negotiation allows a mediator to shuttle back and forth between unamicable and unempathetic parties with offers for settlement. All that is necessary is two separate rooms and a handy hallway.

3 All information gathered in the process is off-limits in any subsequent adversarial litigation. Mediation is a confidential process in which the mediator is not permitted to disclose information about the parties in dispute. This condition allows parties to take risks and consider creative alternatives without fear that the discussions may later be used against them. Paper shredders are a must for the well-equipped mediation office.

4 Finally, mediation can be conducted at a fraction of the cost of litigation and in much less time. To the contending parties, saving money and time seem to be the biggest selling points.

ACT III

Michael McLean, the singer/songwriter, makes a surprise visit to sing "Happy Birthday" to one of the instructors. He tells the story of a "play doctor" in New York who gave advice about *Fiddler on the Roof* before it was mounted and staged. The composer and the lyricist spent an hour telling the story of "Fiddler," jumping and dancing around with short bursts of music from the piano. They began: "There is this man named Tevye who lives in a small Jewish settlement in Russia." They finished telling the story and waited expectantly for the play doctor's opinion.

He pulled at his beard awhile and then asked, "So, what's it all about?" A little discomposed, the composer and the lyricist again started an explanation of the play. "There is this man named Tevye who lives in a small Jewish settlement in Russia."

Ten minutes into the story they were interrupted again. "So, what's it all about?" Once again they tried: "It's about this man named Tevye."

"No! What are you trying to say in this play? What's it all about?" The composer and lyricist stopped to think. "The play is about a family's traditions."

"Traditions!" yelled the play doctor. "Now, that's your beginning!"

Schooley Mediation Program

In July 1997 Gerald R. Williams, J. Reuben Clark Law School's "Mr. Negotiations," left to preside over the France Bordeaux Mission. His departure left an irreplaceable space in the alternative dispute resolution (ADR) efforts at the Law School. In response to Professor Williams' absence and growing student interest in the theory and practice of negotiation and mediation, the Schooley Mediation Program (SMP) was established in November of 1998 with the support of the Law School and funding received from the Schooley Trust. Designed initially to coordinate student training and existing legal externships in the local small claims court, the SMP has expanded to provide opportunities in the training of professionals as well as law students' participation in victim-offender, domestic, and school mediations.

The SMP's goal is to promote peaceful conflict resolution through community outreach, certification, coordination of training, and actual client experiences for law students and professionals. At a law school sponsored by The Church of Jesus Christ of Latter-day Saints, a good "fit" for the teaching of nonadversarial means for resolving disputes has always seemed appropriate. Thus, the SMP has allowed the Law School to take such scholarly work and simulated training and put them into practical use in serving the members of the local community.

When Professor Williams returns during the summer of 2001, he will see the fruition of the significant ADR "seeds" he planted. In addition to an expanded curriculum in this area of study and an active ADR extra-curricular student group, he will encounter a growing number of students who are actively pursuing ADR-related externships administered through the Schooley Mediation Program.

With the addition of Professor Williams' vast ADR experience and scholarly ability, the Schooley Mediation Program is destined for even greater things.

The beginning of any mediation is identifying the problem that brought the parties to the table, and that is done by listening carefully to their stories, the "What's it all about?" part.

The parties must agree before the stories begin that they will be civil, that they won't interrupt, that there won't be any name calling or fighting, that they will tell the truth, and that they will work together to solve the problem. It's best if the parties will actually sign a contract to this effect. A signed contract in the hand is worth two or three or four reminders to an oral agreement.

ACT IV

Mediation role-play is hungry, thirsty work. Each day we break midmorning and refuel with fresh fruit and muffins; midafternoon it's corn chips and taco dip, with all the soda pop and juice we can drink. During these break times we find ourselves using the listening and reframing skills we've been practicing in class.

"My jerky brother-in-law hasn't paid me back what he owes me for a trip last year, and he just bought a new boat!"

"You are upset that he has not paid you the money he owes you and feels unshackled enough from your debt to incur this large expense."

"He took my mother's china to the cabin!"

"The china has sentimental value to you because it originated in your family."

Mediators call restating what has been said by the parties "reframing." Reframing occurs when the mediator substitutes "neutral" words for the parties' biased or judgmental words. It's amazing how once insults and emotion are edited out of statements they can be restated concisely and effectively.

Demonstrating "active listening," a mediator begins by having the parties take turns telling stories. Through nodding your head and keeping eye contact, you demonstrate to the speaker that his or her message has been heard and that you are interested in the information given. You may also ask occasional questions for clarification. These polite questions and your reframing are the only interruption allowed during their monologues.

ACT V

The room is darkened and a tv with a vcr is rolled in. The screen flickers as an old copy of Disney's *Pollyanna* comes to life. Aunt Polly's house servants are complaining about their grim, no-joy Sundays. Pollyanna chirps that they should play the "glad game" to feel better. "What is there to be 'glad' about on Sunday?" they grump. "Well," intones the cheery miss, "it will be seven whole days until another Sunday rolls around."

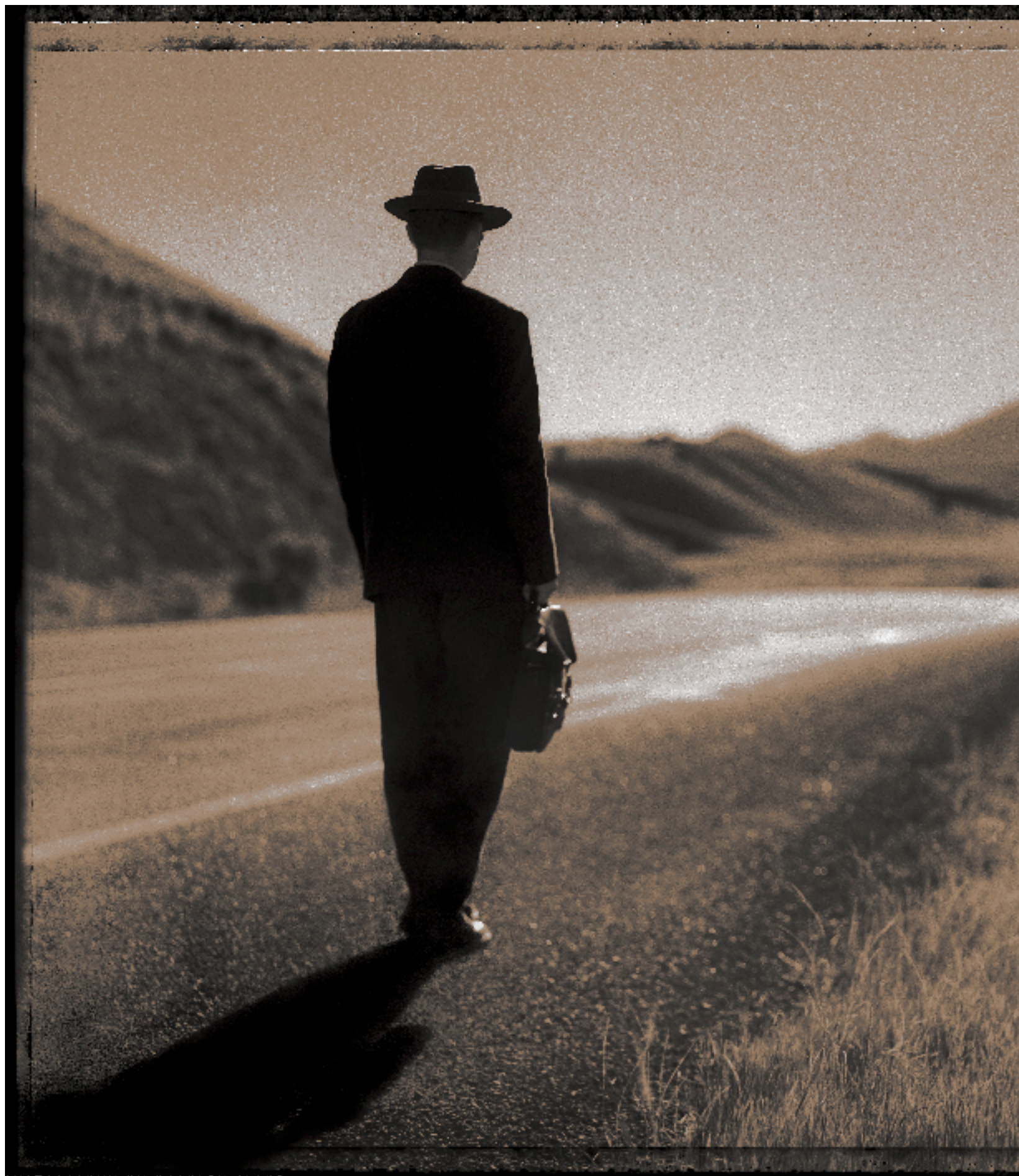
Mediation strives for a win/win situation for the parties: all interests satisfied in the best of all possible options, an outcome objectively fair and sensible, and commitments well planned and realistic. To reach the best alternative, parties must be tolerant and willing to compromise when they disagree. When the process begins with each side telling his or her story, the mediator writes down the issues and decides how to proceed on those issues (with the parties' help). This step is called "brainstorming": discussing and evaluating the options, discussing interests, running "reality checks" for the parties (which means bringing them back to objective criteria, especially the criteria the courts would use). Is their position reasonable? Can they see the other party's point of view? What are the long-term consequences of their choices?

We didn't just talk about the "how" of negotiation in mediation training; we played at negotiation over and over again. Sometimes we were parties, sometimes we were negotiators. It was amazing how we kept coming together, even when some of us were typecast to be difficult. There was excitement in the air—mediation does work!

EPILOGUE

At small claims court my fellow trainees and I scramble to amass the 10 hours of experience the court requires before we can be put on its list of qualified mediators. A man relates to me that he is now less adversarial in his law practice. A woman tells me it has been the best training she has ever received. Another man says he uses active listening and reframing every day with his three young children. One trainee has already started mediating with real-estate practitioners in political action committees. He has been able to diffuse emotionally charged meetings by drawing on his mediation training, dragging them back to the possible and the practical. And me? I have my 10 hours and am waiting for the court to call.

Jane H. Wise teaches Legal Writing in the Rex E. Lee Advocacy Program at the Law School.



PHOTOGRAPHY BY BRADLEY SLANE



GOOD WORDS

FOR THE

JOURNEY

AHEAD

by Stephen H. Anderson

M

y soon-to-be colleagues in the law, congratulations! You have successfully made it to the end of a long road, beginning back when you took the LSAT, sent out law school applications, and entered here as first-year students. As an understatement, I suspect that traveling that road you had some occasional stress. Since misery loves company, you probably shared your stress generously with family and friends. Because of that and many other things—especially overwhelming pride in your accomplishment—this is a joyful day for all of them as well. On your behalf, I recognize, congratulate, and express gratitude to spouses, parents, other family members, and friends for their loving, long-suffering support and sacrifice. In a very real sense this is their graduation, too.

You have received a first-rate education from a first-class law school. Graduates and others associated with this school grace the law nationwide. For a proximate example, former BYU professor Dale Kimball and alumnus and adjunct professor Dee Benson compose half of the four active judges of the federal district court for Utah.

Two of my favorite lines come from Chief Judge Benson. Some years ago Judge Benson had to have surgery to remove a growth just inside his skull. The night before the operation, the surgeon visited his hospital room to discuss the procedure. Judge Benson asked if the surgery would require the removal of any brain tissue. The surgeon replied, yes, it was necessary to assure adequate margins around the growth. Judge

Benson responded quite cheerfully, "Good, take the part where the bar review course is stored. It hasn't been a bit of use to me since the bar exam."

Then

after a moment's reflection, he added, "And if you have to take a whole lot of tissue, that's okay, too. Then I'll be qualified to sit on the Tenth Circuit!"

I want to repeat what I said a few years ago on a similar occasion. I know what you are thinking: *I'm outta here!* Of course, the problem with being "outta here" is that you are into "there." "There" is not a bad place to be right now. In Greenspan-speak, you are entering a vibrant economy and a robust job market. That market has demonstrated remarkable elasticity in demand for people trained in the law.

According to American Bar Association market research, over 90 percent of 1998 law school graduates were employed as of February 1999. That marked the fifth consecutive year of increased overall employment of new JD graduates.

The largest number of you will be in private practice, but positions abound in government, public-defender work, public interest law, business, and other sections of the economy. Wherever you go, the field of law has never been as important and as fascinating as it is right now.

Globalization of commerce has increasingly internationalized the practice of law, creating enormous opportunities. The exploding universe of information and communications technology, computer hardware, software, delivery systems, emerging marketing cultures, and more are ushering in a new age of law as well. Genetics is another vast new frontier. More and more clients and employers will deal in these areas and will need sophisticated and innovative legal advice.

Just to touch on a few other subjects, by way of further example: problems of aging, including estate and disability planning and surrogate decision making; multiculturalism; the environment; water sharing; energy; transportation; all aspects of civil rights laws; the behavior of major corporations

The following speech was presented at the J. Reuben Clark Law School commencement on April 21, 2000.

tions; delivery and recourse in medicine; and much more are all evolving areas of the law requiring skill and new thinking.

The courts are changing as well. The senior partners in the law firm I joined took the train to Denver to argue before the Tenth Circuit. Now the judges can sit in Denver and hear entire daily calendars by way of videoconference from remote locations so that lawyers don't have to travel at all. When the court files an opinion, it is immediately accessible on an electronic bulletin board. Electronic filing and computer access to court dockets are increasingly available.

It may amaze you young folks to know that some judges of golden years have put their quill back in the goose and do e-mail and other computer stuff. And if *you* are not amazed, I am! Opinions, comments, arguments, and revisions circulate back and forth between chambers with the speed of, well, e-mail.

On every hand there is change and innovation. All of it amounts to a richly varied set of opportunities for you.

You may be wondering whether you will be happy in the profession. My first answer relates to a 1995 American Bar Foundation survey of 800 randomly selected Chicago lawyers, which found that the vast majority—84 percent—reported they were satisfied or very satisfied with their jobs. My second response is that, basically, the answer for you will depend on your values and expectations. Someone has said that happiness boils down to someone to love, something to do, and something to hope for. Add to that a foundation of faith and sound values, and I think you may find much truth in that statement. In any event, it would be a mistake for you to regard money as life's report card.

As you commence your careers, I urge a few things for your consideration. I have placed them in six categories.

First, keep sharpening your tools. Your schooling has given you tools of both knowledge and skill. Legal knowledge is a depreciable asset requiring ongoing capital improvements. During the past three years while you have been in law school, the federal courts, both trial and appellate, have decided more than a million cases resulting in about 275,000 pages of published opinions. State courts have decided tens of millions of cases. Congress has passed something like 1,200 bills; state legislatures, thousands. Federal agencies have added thousands of pages to the Code of Federal Regulations, and local governments have equaled that output in laws and ordinances.

The law you know today will be partly dated by tomorrow and mostly dated in 10 years. In addition, you will probably change jobs or areas of practice emphasis at least three times during your career. So keep learning. We are all students of the law, always. Continuing legal education programs, seminars, sections of the bar devoted to specialties, and other sources of knowledge are important to you. Use them.

The skills you have learned are more durable tools. You have learned how to think like a lawyer. I've heard some graduates say they don't know what that means. It means you know how to look at a problem analytically from the standpoint of legal precedent and text, sifting out what is not relevant. In that context you have learned a new view of what is salient in approaching human conflict. You have learned that asking the right question may be the most important thing. As I tell my clerks, ask four questions: What is the issue? What are the relevant facts? What is the law? What is the solution? The first question is always the most important: What is the issue?

Law is relentlessly, sternly, unforgivingly detailed. Yet, as in the graphic arts, you must labor over the smallest detail while simultaneously knowing and never losing sight of the big picture.

The best finished product is the easiest to comprehend. Abraham Lincoln said of Stephen A. Douglas, "He can compress more words into a smaller idea than any man I have ever known." There is another saying: "When ideas fail, words come in handy." In law, that failing is called "juris-babble." The true legal artisan takes the raw material of legal complexity and fashions a powerful concept into words so simple and descriptive that they rival the skill of a poet's insight. There is elegance in clarity, in making the complex simple.

You have the necessary tools now. Keep sharpening them. They will serve you well—in law, in business, or in whatever activity you might engage.

Second, avoid isolation. Get out and serve and participate. Specialization, job demands, firm budgets, and similar forces tend more and more to cut lawyers off from full participation in the legal community and the community at large. Lawyers have traditionally worked within and through the organized bar to improve the administration of justice. Members of the bar support law-related education in the schools, night small-claims courts, free legal advice through the Young Lawyers Tuesday Night Bar, and many other programs, plus serving on committees established to study and improve the effectiveness of the legal system. These voluntary, public-spirited services are part of what makes law a profession, not a trade. For some role-model examples, I will name just a few: President James E. Faust

of the First
 Presidency of the
 Church, past president of the
 Utah State Bar; Eugene Hansen, president of the Salt Lake Temple and past president of the Utah State Bar; Elder Dallin H. Oaks of the Quorum of the Twelve, former executive director of the American Bar Foundation; former Governor Scott Matheson, past president of the Utah State Bar; and Dean Reese Hansen, currently an ex officio member of the Utah Bar Commission.

Beyond service in the bar, there is community service and vigorous participation in the political process. Traditionally, lawyers have been fully involved in organizations and projects that seek to make the community a better place to live. Serve in these ways. Participate. You will make lifelong friends and find your profession extraordinarily more rewarding, while being part of the solution to society's problems.

Third, know the difference. I have some advice for you based on my 40 years in the law. Some lawyers have the motto that the breakfast of champions is not Wheaties, it is the opposition. I suppose that's okay. But, if I may put it bluntly, there is a difference between being a good

lawyer and being a jerk. You don't have to resign from the Church or the human race to be brilliantly effective and successful as a lawyer. In sports we are fond of labeling some players as being a class act in addition to being a superstar. The same is true in law. You can be a great lawyer *and* a class act. I know some great lawyers who I have never heard swear or seen lose their self-control or cut an ethical corner.

There is a difference between being a realist and being a cynic, between being intense and being mean, between being probing and being cantankerous, and between being a retailer of negatives and difficulties and being a creator of solutions and results.

You do not have to become someone's mad dog to be their strong advocate. I don't know of anyone who wants their epitaph to be "Here lies lawyer so-and-so, one of the meanest people in town."

Seek and prize qualities of civility and integrity. Develop advocacy based on brilliant reason, deep learning, honest hard work, and fair presentation. These are marks of the true professional.

Fourth, respect your oath. Law is

the only profession that is not licensed by the executive branch of the government.

Lawyers are regulated by the judicial branch of the government. And law is the only profession that requires an oath as a condition of licensing. The lawyer's oath you will take incorporates by reference specifically enumerated duties and the Rules of Professional Conduct. The duties, among other things, require you to tell the truth; to not delay, obstruct, or subvert the legal process; to not knowingly prosecute a false action or act maliciously or deceitfully; to be loyal to your client; and to charge fairly for your work. Just as important, you will undertake a separate duty as an officer of the court. This duty and responsibility extends to the court and the rule of law in a democratic society.

Your oath is serious business.

Today you sit here unified as graduates. When you pass the bar and take the oath,



you will stand unified as lawyers, as members of the legal profession. Then you will scatter in dozens of directions, some into corporations, some to government, some into big firms, some into small firms or a solo practice. Because you split up to go in different directions, do you suddenly become less or more of a lawyer than when you stood together to take the oath? Does the door you walk through to work diminish or enhance what your oath means? The answer is no. Your professional status means more than just a paycheck. You are never just an employee. You are a lawyer, a professional. While the legal profession may be a mile wide today, it is only one lawyer deep where you and your work as a lawyer are concerned. The health and regard for the rule of law in our society is not some other lawyer's responsibility. It is your responsibility. There are no free rides. You have worked hard to become a professional. Do not let the door you walk through to work make you less of one.

was real joy in that afternoon

Fifth, I commend to you the words above the entrance to the Supreme Court of the United States: Equal Justice Under Law. Everyone, not just the rich and powerful, deserves the full protection of and access to the law, just as we expect every American to obey the law. Commitment to equality under the law, embedded deep in the foundation of this republic, is not played out just in programs and more due process; it begins in the heart.

In the book *To Kill a Mockingbird*, Atticus Finch's daughter Scout was puzzling over how a jury could find a black man, Tom Robinson, guilty of raping a white woman when the evidence clearly showed he hadn't. Then it became clear to her. As she put it:

How could this be so, I wondered, as I read Mr. Underwood's editorial. Senseless killing—Tom had been given due process of law to the day of his death; he had been tried openly and convicted by twelve good men and true; my father had fought for him all the way. Then Mr. Underwood's meaning became clear. Atticus had used every tool available to free men to save Tom Robinson, but in the secret courts of men's hearts Atticus had no case. Tom

was a dead man the minute Mayella Ewell opened her mouth and screamed. [Harper Lee, *To Kill a Mockingbird*, (New York: Warner Books, 1960), 241]

The teaching to us and all other citizens was given two thousand years ago. It is the second great commandment: "Love they neighbor as thyself."

As a political summation, John Hancock, when urging the Massachusetts convention to adopt the Constitution, put it this way: "We must all rise or fall together. . . ." The true professional commits to a just society.

Finally, seek joy and balance. You can only live happily ever after one day at a time. We all know that life is not a trip to Disneyland, but too many of us are like Aunt Agatha, whose life was full of tragedies, only a few of which actually happened.

In his book *Leading the Charge*, Lee Roderick tells of Senator Hubert Humphrey, dying of cancer, returning to address the Senate a last time. Instead of words of sorrow or despair, Senator Humphrey still preached the politics of hope and joy and faith. These are good words for your journey ahead: hope and joy and faith—especially joy. If we look for it, it is everywhere.

While I was sitting at my desk with my brow furrowed a couple of weeks ago, I got a telephone call from my wife informing me that, due to a bizarre set of circumstances, I was the only logical one available to tend my seven-year-old granddaughter and my four-year-old grandson for several hours that afternoon. I had never been a starter in that game. I had come off the bench a couple of times, but only when the mother and grandmother starts were on the floor. Both of these grandchildren have been pretty reserved around me. I suppose it's because I am big, wear a black suit, and usually have my nose stuck into something to read. But I was game. I answered the summons. I put on old clothes and spent a couple of hours inventing ball games and playing tag and doing a lot of stuff sitting on the floor. The sun came out. The friendship between my grandchildren and me warmed to a degree never before experienced. We had a terrific time!

But more was yet to come. On the drive back to their parents' house, with the children securely strapped in their seat belts in the back seat, the seven-year-old ordered me to turn on the radio and tune it to 860, the Disney station. Shortly after that, the station started playing a song and my formerly shy four-year-old grandson shouted with glee from the back seat, "Grandpa, turn it up! This is my favorite song!" Then with absolute joy he began singing along in perfect pitch at the top of his lungs, "Hit the road, Jack, and don't you come back no more, no more." It was so infectious, the seven-year-old and grandpa joined in. Then, there were the four-year-old and the judge, belting it out with joyous abandon: "Oh woman, oh woman, why you treat me so mean, you're the meanest old woman that I've ever seen." We really rocked! We laughed! We bonded! There was real joy in that afternoon.

You have now and will continue to have all kinds of moments of joy, large and small, in your life. Seek them. Treasure them. They will act as counterbalances to life's difficult moments.

One of the best ways to position yourself for joy is to lead a balanced life. Working hard does not mean only work. Family and church and adventure and activity and learning new things and serving and sharing will be your greatest antidote to life's ills.

You may wonder what lies at the end of a 40-year career. I will tell you. Family and faith and integrity. Everything else fades into the background. Nurture your family and faith, and safeguard your integrity.

Take care of yourselves. Enjoy your family. Enjoy your friends. Take care of your health. You are wonderful people, intelligent, ambitious, dedicated, goal-oriented, and idealistic. We welcome you with all our hearts into the legal profession. We look forward to your creativity, intelligence, energy, and constructive contributions.

May God bless you is my prayer in the name of Jesus Christ. Amen.

Stephen H. Anderson has served as a judge of the United States Court of Appeals for the Tenth Circuit since 1985. He is a past president of the Utah State Bar.

AN INDIVIDUAL FAILURE

by Clay M. Smith

The following article appeared in the April 1999 issue of the Orange County Lawyer.

The criminal justice system is constantly measured, evaluated, and criticized on a quantitative basis. We track numbers of cases filed in various categories, cases per judicial officer, cases awaiting trial, cases resolved by plea, persons in jail, persons in state prison, etc. These statistics are valuable in assessing trends within society and the success or failure of programs, laws, and other actions. Nothing, however, drives home a feeling of success or failure as does an *individual* experience.

In July of 1998, I was assigned to the felony master calendar. Before going into this extremely busy courtroom, I

spent a few hours observing my predecessor, Judge Richard Behn, handle the calendar. On the afternoon of July 2, I sat in the jury box monitoring the proceedings. A case was called. I was stunned to hear the name of the case, *People v. Malewski*. It was a relatively unusual name, and several years earlier I had known a young man named Mark Malewski. The defendant and his attorney stood up in response to Judge Behn's call of the case. I quickly located the defendant. He was a young man of perhaps 22, tall and trim. I visually searched his face hoping that I would not recognize him, that he would not be the same Mark Malewski I had known. My fears, however, were realized. It was he.

Nine or 10 years earlier, Mark Malewski had been a young man of 12 or 13 who had joined the Boy Scout troop that I served as Scoutmaster. He had come into the troop with his cousin, Tim. As I listened to the proceedings, I reflected on the different paths that Tim's and Mark's lives had taken. Tim had continued in Scouting and achieved the rank of Eagle Scout. He had spent two years in missionary service for his church and was now attending college at one of the University of California campuses. Tim's life had purpose and meaning. His cousin, Mark, on the other hand, had dropped out of Scouting, had not pursued an education, had allowed the insidious plague of drugs to work its way into his life, and was now standing in Division Seven answering to a felony charge of possession for sale of a controlled substance.

As I listened to Mark enter a plea of guilty, answering a long series of questions, waiving rights and acknowledging his understanding of the consequences of the plea, I reflected on the divergence in the paths of Mark and Tim. What had caused that divergence? Could I have prevented it? What went wrong? Who went wrong? Of course, there was no single cause of Tim's success or Mark's difficulties. And although I obviously don't have the full answer to the questions that ran through my mind, my reflection, I feel, did lead to a little insight.

During their years in Scouting, Tim's parents always attended each event. His mother provided encouragement, transportation, and other support for Tim's Scouting, sports, and other activities. His father accompanied the troop on camping trips and other outings. Mark's parents, from my limited perception, were less involved in his activities; they permitted, but did not support, his involvement in Scouting and church activities. As Mark and Tim reached the middle teenage years, Mark dropped out of Scouting and disengaged from his prior church involvement. All aspects of human conduct and misconduct are complex. And I do not intend here to suggest simplistic causes or solutions. I firmly believe, however, that the key (but not sole) factor in the divergence of Mark's and Tim's life experiences was the degree of positive involvement of family—especially parents—in their lives when they were children.

Our society is replete with institutions devoted to helping, reaching, teaching, and redeeming people. We are grateful for these institutions and their positive effect in the lives of individuals. My experience with the *Malewski* and many other cases confirms to me that no institution even approaches the influence and impact that family in general and parents in particular have on us as people. If every child had loving, committed, capable parents, I would be out of a job—and gratefully so (or perhaps reassigned to a civil calendar!).



Criminal conduct has many costs, some of which are obvious and some of which are not. Certainly, most people are generally aware of the economic cost of criminality to society. The mere monetary cost of operating our criminal justice and penal institutions is staggering. It is disheartening to contemplate the good that could be accomplished with those

resources if they were devoted to other needs or left in the hands of taxpayers.

We are also keenly aware of the economic and emotional impact of criminal conduct on the victims of crime. Our legitimate concern for these victims has been enshrined in our constitution as follows:

It is the unequivocal intention of the People of the State of

California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. [Cal. Const. art. 1, sec. 28]

In recent years California courts have made huge strides in effectively implementing this policy by imposing upon those convicted of crimes an enforceable obligation to make

restitution to those injured by their conduct (see *California Penal Code* § 1202.4). For example, during the period from July 1, 1998, through June 30, 1999, restitution payments to crime victims in Orange County alone exceeded \$3 million. Significantly, these payments do not come from the public fisc, but rather from restitution orders imposed on the actual offender or from



the restitution fund, which is underwritten by restitution fines imposed upon virtually every person convicted of a misdemeanor or felony.

Our systems are less capable, however, of offering redress for the emotional impact of crime on its victims. Tragically, many of the direct consequences of criminal conduct cannot be remedied by writing out a check. Our human insti-

result he received several hundred dollars in welfare benefits to which he was not entitled. Because the amount exceeded \$400, the district attorney was prosecuting the case as a felony under *Welfare & Institutions Code* § 10980. The potential consequences to Mr. Bradshaw of any felony conviction: 25 years to life in state prison. The potential consequences to Tarah: unimaginable.

of his church. Many of his supporters had submitted letters describing Mr. Bradshaw's current life and his complete devotion to his young children. His attorney also gave a persuasive plea in his behalf. But the most indelible memory of that case is not the packed courtroom or the eloquent argument. Rather, it is the letter submitted to me by nine-year-old Tarah. It read:

also reminds me of the unseen victims present in virtually every case. Tarah had very little in the way of material things, but she did have that which meant the most to her—her family. And now, her father's criminal conduct was threatening to take that from her too.

Ironically, the law does not consider Tarah to be a victim. *Penal Code* § 1202.4(k) defines a "victim" as a person or entity

THE HIDDEN VICTIMS

by Clay M. Smith

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tutions simply do not have the power to turn back the hands of time and restore the loss of a loved one, a battered body or psyche, or even a sense of security and well-being.

There is, however, another and less apparent category of "victims." This is a group upon which the cost of crime also lands with both feet. These victims are the innocent children, spouses, and other family members of criminals. A case I recently handled illustrates my point.

The case was *People v. Bradshaw*. Mr. Bradshaw was a single father working to support himself and his children, one of whom was a nine-year-old daughter named Tarah. At some point in his distant past he had suffered two felony convictions for serious or violent crimes. In other words, Mr. Bradshaw had two "strikes." In the current case, Mr. Bradshaw, who was receiving public assistance, had found a part-time, temporary job and did not report the income to the county welfare officials. As a

Shortly after Mr. Bradshaw's arraignment, a bail review hearing was held. Mr. Bradshaw was seeking an own-recognizance release so he could work and care for his children. His goal was to make reimbursement and attempt to persuade the district attorney to reduce the charge to a misdemeanor. The district attorney opposed such a release, because Mr. Bradshaw was technically a three-strikes defendant. The stakes at that hearing seemed remarkably higher than most bail review hearings. If released, Mr. Bradshaw might be able to make restitution, and if so, it would not be uncommon for the district attorney to reduce the charge to a misdemeanor, thereby eliminating three-strikes exposure. On the other hand, it would be extraordinary to release a three-strikes defendant on his own recognizance.

At the hearing, the courtroom was literally full of supporters of Mr. Bradshaw, many of whom were fellow members

My father has been gone for over a week and I miss him dearly. I am nine and I have been living with my father for four years now and they have been the best years of my life. He helps me with my homework and we say the Lord's prayer before I go to bed. My father is a great father and I love him very much. My dad is a handsome man and I miss him sitting next to me and saying I love you Tarah and never forget that and he would say you're always with me in my heart. Please let my father come back please because I do not want this family to fall apart. I'm starting to feel really lonely without my dad being around. Did you take my dad because he had to pay rent for us? I am writing this letter because he means a lot to me. I hope you understand this letter. I really hope you do. PLEASE let my dad come back HOME.

I occasionally take a copy of this letter out of a file and read it. I read it to remind myself of just how much fathers mean to daughters, mothers mean to sons, and so on. But it

that is a "direct victim of a crime." The statutory requirement that the person be a "direct" victim has been interpreted to mean that the person (or entity) must be the "object of a crime" (*People v. Valdez*, 24 Cal. App. 4th 1194 [1994]). Thus, while an insurance company (*People v. Foster*, 14 Cal. App. 4th 939 [1993]) or a governmental agency (*People v. Crow*, 6 Cal. App. 4th 952 [1993]) can be deemed a victim and entitled to restitution, Tarah cannot because she was not the object of the crime.

My purpose here is not to suggest that the laws pertaining to restitution be broadened to allow an offender's family to be compensated from the restitution fund, but rather to point out that there are often (or perhaps always) hidden victims of crime. They too are worthy of our concern.

Clay M. Smith is a judge of the Superior Court of California, Orange County. His articles are frequently published in the Orange County Lawyer.

Expanding Assignments for Kevin J. Worthen,

Would-Be Historian/Basketball Coach

BY LOVISA LYMAN

f Kevin J. Worthen, who joined the law school faculty in 1987, could have had a second profession, it would have been teaching high school history and coaching basketball on the side—or coaching high school basketball and teaching history on the side. His reason: “You can impact students’ lives at the high school level in ways you can’t at later stages in education and graduate school. You can affect the way they chart their lives.”

During his high school and college years, Kevin played competitive sports, which he still enjoys (“more by watching than playing at this point”), and he chose political science, a

close relative of history, as an undergraduate major. But when it came to graduate school, law was his first choice. In all its forms, lawyering is what he loves still.

Now two new university assignments may satisfy any of Kevin’s lingering needs to nurture and mold. In February 1999 he joined the Law School deans, consisting of Dean Reese Hansen and Associate Deans Clifton Fleming, Constance Lundberg, Scott Cameron, and Kathy Pullins. More recently he was invited to be BYU’s faculty athletic representative to the National College Athletic Association (NCAA), where he can work to assure that student

athletes’ education and welfare needs are met.

Kevin’s particular purview as associate dean is technology, including computers and copier coordination; the advocacy program; and academic affairs. These responsibilities are a departure from his areas of teaching and research expertise, which are particularly strong in state and local government law, rights of indigenous peoples in international and comparative law, and federal Native American law.

In the area of technology, Kevin assumes burgeoning duties in what continues to be one of the most technologically advanced law schools in

the country. For the past three years, entering students have been required to own laptop computers compatible with the Law School computer system. Coordinating and overseeing system access has grown to mammoth proportions with 500 students now hooking into databases for anything from perusing e-mail to Westlaw research to taking final exams. Added to this duty is copier oversight. Under Kevin’s supervision, the law library recently added a digital scanner to copy such resources as rare and fragile materials, professors’ packets, handouts, and copyrighted supplemental reading and then electronically send them to



print services for reproduction. In addition, the Law School contracted for BYU Print Services to provide and service the other copiers in the building. Negotiations for this deal were long and complex but came to a successful conclusion in time for fall packets.

The advocacy program, begun four years ago when Dean Constance Lundberg proposed, researched, designed, directed, and taught a lawyering skills course integrating legal research and writing for all first-year students, has continued to grow and change. Though the concept of integrating research and writing courses is widespread, BYU's

course remains unique among legal writing programs because of the level of cooperation between library and writing faculty and their unified dedication to teach students in ways that will directly carry over into their future practice of law. In addition to law librarians who teach the research arm, the program has six adjunct faculty who teach writing, a writing specialist, law student research assistants who tutor small groups of students, and administrative staff. Kevin, ably assisted by the program's current director, BYU Law School graduate Monte Stewart, oversees everything from selecting new adjunct fac-

ulty to presenting the program to full-time faculty and alumni.

Kevin's third duty as associate dean is in another expanding arena: academic affairs. Dean Fleming formerly took charge of all things academic in the Law School, including faculty, scheduling, exams, discipline, counseling, grade appeals, introduction to Law Week, and readmission of disqualified students. Kevin says, "I don't know how Cliff did it all. He never toots his own horn. I know now how much I underappreciated him." Several years ago, Associate Dean Pullins assumed some of the counseling duties, dealing particularly with students in crisis and introducing

students to Law Week. Kevin's charge to oversee academic affairs includes exams and grade disputes, along with discipline for academic misconduct and insufficient academic performance.

Kevin finds that his new duties have a downside as well as an up side. He has had to cut his teaching load in half and fit his research into small segments of time. Since teaching and research are the reasons he left successful practice to return to academia, this has been challenging.

He discovered how satisfying real-world legal research can be after graduating first in his class and becoming one of only nine BYU Law School graduates to have been awarded Supreme Court clerkships. That clerkship immediately followed one with Judge Malcolm R. Wilkey of the United States Court of Appeals for the D.C. Circuit. In both clerkships, Kevin found that his BYU training had armed him with research skills comparable to those of his co-clerks from Michigan and Harvard.

What Kevin liked most about his clerkship opportunities was the chance to ask hard questions about the nature of the law. When he had those questions in practice, he could occasionally manage an hour or two to research the issue, but if the response was not directly tied to his client's problem, he was essentially wasting time. Practice was, therefore, sometimes frustrating, because it did not always allow him to work through all aspects of a matter as thoroughly as he would prefer.

Occasionally his desire to research hard issues coincided with serving his client's needs. Kevin particularly remembers a case in which he represented

the small town of Parker, Arizona, on the Colorado River across from California. At issue was whether the town was part of the Colorado River Indian Tribe Reservation. History of the region was crucial to the case, and he avidly pored over old manuscripts. Historical research finally broadened to the point that the firm hired a professional historian to write a history of the area. Local small town politics added color. If the town was part of the reservation, local leaders wondered, where should offenders be tried and by whom? Ultimately things got ugly when word got out that the police didn't have authority, and a young man was shot while resisting arrest. Amazingly, when the town reverted back to the reservation, the tribe ended up with no significant advantage.

"The main purpose of the case was not to secure tribal advantages but to get a definitive judgment," Kevin concludes. "Having some settled rule was more important than what the rule was."

As a law professor, Kevin advocates more "pro-tribal sovereignty" than he did at the time of the case. Many of the articles he writes are either about Native American law or about a concern linked to it. When he researches he prefers to devote concentrated periods of four or five hours at a time. As an administrator he has roughly the same amount of research time, but it is in smaller segments. In that regard, his current situation is more like it was in practice. Also gone are the days when he could invite students to drop in anytime or could skip out for a child's school program and then work late into the evening. Now students must often make

appointments. Deadlines help to get the research and writing done. Thus, his two most recent publications resulted from invitations to prepare and present papers at conferences.

The job's up side is working with "really good people." "I'm trying to learn how the other deans do their jobs so well," Kevin says. He thinks that, like Dean Fleming, Dean Hansen may also be underappreciated. He is the dean who handles, with "apparent grace," all the really hard matters that the other deans must sometimes pass along to him.

As an associate dean, Kevin also sees a broader view of the mission of the Law School than he did before. He says,

We recently drafted a mission statement for university budgeting purposes, but I think the mission is evolving, and at this point, no one knows what the ultimate mission will be. If the mission were only to provide first-rate legal training to LDS students, there would be better ways to do that than to build the facility we have, staff it, and provide scholarships and financial assistance to a large proportion of the student body. I haven't taken the time to write down the hard calculations, but I suspect if that were our goal, it would be cheaper for the Church to simply give full scholarships to 150 students a year to attend the best law schools in the nation. So there must be a reason for bringing students and faculty with common beliefs and values together—something that couldn't occur if students were scattered over the whole country. [Because of their BYU experience,] students should be better lawyers and Church members for being here. This critical mass should shape the law.

Kevin thinks there is evidence that this is happening: "Where else could one produce Richard Wilkins' World Congress on the Family or Cole Durham's Center for Law and Religion?" He concludes, "Though we may not be able to put the mission into words, it was clearly manifest that there should be a school. The exact reasons are still unfolding."

To fulfill the mission, whatever it turns out to be, Kevin pinpoints one trait students need to acquire and enhance: charity. "This may be naive, but I think the most valuable personal characteristic a lawyer or law student can have is charity, in the sense of the pure love of Christ for others," he says. "If lawyers really care about their clients, they will work harder at the job, be more thoughtful, more persistent, more dependable." Kevin doesn't consider himself to be a people person and is perfectly content to be alone a lot of the time, but he does see clearly what can result from charity in relationships with students and colleagues. He explains, "Though practice may not always be intellectually satisfying, it can be emotionally satisfying just because you are dealing with a real person you care about who has an issue that matters."

This attitude of charity and concern for fellow beings carries over into Kevin's new assignment as BYU's faculty athletic representative to the NCAA. He is not new to this type of service. From 1992 to 2000 he served as chair of the University Athletic Advisory Council, advising on academic integration of student athletes into the university. Between 1997 and 1999 he also served as chair of the Self-Study Steering Committee for NCAA Certification, the athletic equiv-

alent of law school accreditation; and from 1998 to 2000, he was a member of the University Athletic Drug Testing Policy Committee.

Two years ago he suggested to Fred Skousen, BYU advancement vice president over, among other things, athletics, that it might be time to assign a new chair for the Athletic Advisory Council. A year later, Skousen asked if Kevin would be willing to trade the Advisory Council job for another representative position. Kevin agreed. The result was his present assignment to the NCAA.

All universities involved in intercollegiate sports must have an NCAA faculty representative. This person coordinates the university's interactions with the NCAA and the Mountain West Conference, including matters dealing with eligibility questions, rule interpretations, and investigations. Kevin will meet twice yearly with the Mountain West Conference as part of a joint council made up of athletic directors and university representatives. He also reports to the university president and helps to determine the university's position on any new NCAA legislation.

On the local level, Kevin will work with the newly created student athletic center on campus to help meet athletes' welfare and education needs. He will also meet with coaches and groups of athletes on a regular basis to establish communication lines and keep them open.

Both of Kevin's new assignments fall under the heading "Making a Difference in Students' Lives." Though his impact may not be as immediately apparent as that of a high school basketball coach, it can be long-lasting as BYU students "go forth to serve."

The Making of a Law Professor

BY SCOTT W. CAMERON

How does five years of law school sound? While many may blanch at the thought, new *BYU* Law Professor John Fee does not. He describes his three years at the University of Chicago Law School as extremely valuable but acknowledges that his legal education continued beyond graduation. In fact, he says, the last two years of his legal education—one under the tutelage of Judge Frank Easterbrook of the U.S. Court of Appeals for the Seventh Circuit and the second as a law clerk under the guidance of Justice Antonin Scalia of the U.S. Supreme Court—were the best part.

After serving as articles editor of the *University of Chicago Law Review* and graduating Order of the Coif in 1995, John clerked for Judge Frank Easterbrook, “one of the finest individuals and one of the best legal minds he has ever met.” He saw the clerkship as a great extension of his legal education. Alongside the judge’s other clerk, John prepared for each of the cases prior to oral argument. “We would sit and discuss the cases together,” he relates. “Judge Easterbrook would make each of us say what we thought of the case and why it should come out a certain way, and he would ask questions to follow up.”

This same intense learning experience continued for an additional year as John had the opportunity to clerk for Justice Antonin Scalia. After each Supreme Court oral argument, Justice Scalia and his four clerks would continue the debate on each case. John feels that Justice Scalia will prove to

be one of the finest justices to sit on the Court and counts his clerkship as a singular experience. “The Justice has a great legal mind,” John says. “He is a person who cares deeply about people and about the law. And he is a good person to work with—very warm and caring.”

In addition to capping a near-perfect legal education, these experiences helped John realize a goal he had set as an undergraduate: to become a professor at Brigham Young University. Although initially he had entertained the thought of teaching music or history, early in his academic career John focused on becoming a professor of law. He is pleasantly surprised that he has realized this goal at this relatively early point in his career. Although it is what he and his wife, Elizabeth, have contemplated for several years, they nurtured it as a “hope” rather than a goal to be pursued aggressively.

A vacancy at the J. Reuben Clark Law School was available when John finished his clerkship with Justice Scalia, but he absented himself from consideration because he knew that experience with a law firm is essential for a law professor. He wondered if and when the timing would be right for him



to pursue and accept an academic appointment. In the late summer of 1999 the desire to pursue an academic career began to surface again, but John was too engrossed in his practice to pursue it. When Professor Stanley Neeleman called John’s home in February and left a message, the Fees were delighted. They felt blessed that *BYU* had called and expressed interest.

As John reflects on his decision to become a lawyer and then a professor of law, he recalls with gratitude the influence of particular individuals on his life’s path: teachers, historical figures, colleagues, and those he has merely observed.

During John’s junior high school and high school years, his father worked closely with a number of fine lawyers in the Department of Commerce, the Department of Justice, and

the United States Attorney’s Office in Washington, D.C., and John became interested in what lawyers do. His interest continued in the mission field, where he came to greatly admire one of his mission presidents, Perrin Walker, an attorney who had graduated from the University of Chicago Law School.

While an undergraduate at *BYU*, John’s interest in law was temporarily superseded by his love of music and history. His desire to be a professor preceded his decision to become a law professor. He feels deeply indebted to his undergraduate professors who had such a strong influence on his desire to teach in a university setting: Truman Madsen, Marie Hafen, Neil York, Frank Fox, and Larry Wimmer, among others. What struck John about teaching at a university level was the

chance to influence others not just in a subject-specific area but also in their view of what constitutes learning. He hopes his students “will take from [his] classes a desire to learn, a hunger for knowledge, not just the knowledge useful to them in practice, but a desire to learn about ideas, about right and wrong, about history.” John believes that a professor can be a catalyst to help students realize “that we learn on our own, and we learn through diligent study all through life.”

John does not limit his thanks to those who have taught him in the classroom; he is also grateful for the influence of historical figures like Abraham Lincoln and Ralph Waldo Emerson. He identifies Lincoln as the historical lawyer who has had the greatest influence in framing his conception of the legal profession. He acknowledges Ralph Waldo Emerson as a thinker who has influenced his view of the world, especially through his speech “The American Scholar” and his writings on nature, politics, and the spirit. While favoring history and biography, John also values good fiction. His favorite novel is Mark Twain’s *A Connecticut Yankee in King Arthur’s Court*. The novel is “good fun” says John, but it also taught him that “good intentions, mixed with bad ambitions, can lead a person astray.”

John recognizes the impact of not only some of the finest living jurists but also his mentors in the Washington, D.C., office of Sidley & Austin. Perhaps the most influential contemporary lawyer in John’s life has been Gene Schaerr. John and Gene first became acquainted as members of the same LDS ward in Maryland

while John was in high school and Gene was a law clerk at the U.S. Supreme Court. Among other things, they played jazz trombone together. Years later, when John returned to the area to clerk for the Court himself, he became reacquainted with Gene, who later recruited John to work with him at Sidley & Austin. John comments, “I have learned more from Gene about the law and how to practice it than from anyone else. He is among the most dynamic and effective lawyers I know. He works tirelessly for valuable causes such as religious freedom, and he has shown me how law can be used for the good.”

Another mentor and the person who most influenced John to consider both the practice of law and the teaching of law was President Rex E. Lee. Although Professor Fee met President Lee just once, he feels he knows him: “I’ve been at [Lee’s] law firm, Sidley & Austin, and worked with and known so many people that have been his colleagues. I know his sons, Tom and Mike, and have worked with each of them. I have heard stories about President Lee for years; he has been a role model to me as a legal professional and as a person.”

Interestingly, John has had the opportunity to follow Rex Lee’s path even though they are separated by more than a generation—first, at the University of Chicago Law School and, subsequently, in two federal court clerkships. John then practiced law with Sidley & Austin, the firm with which Rex Lee practiced. Also, John’s emphasis on religious freedom issues reflects interests of Rex Lee. Professor Fee represented the Seventh-Day Adventist

Church and The Church of Jesus Christ of Latter-day Saints, along with coalitions of religious groups. His responsibilities included working with others to shepherd legislation through Congress.

While law school, clerkships, and the practice of law have been intense learning experiences for John, he reserves his highest praise for the learning that results from being a husband and parent. Upon his acceptance to the University of Chicago Law School in 1992, John wondered whether he would be at a disadvantage being a married student with a six-month-old son. In retrospect, John sees that his wife, Elizabeth, with her recently acquired degree in music from BYU, made the greater sacrifice. He has also come to realize that having a family is “really an advantage.” He notes that his family “helped [him] avoid spending too much time with law.” Elizabeth kept “things in perspective and focused [him] on the right things.”

The growth of John and Elizabeth Fees’ family has been intertwined with John’s law experience. Matthew, the Fees’ oldest son, was born prior to law school; their oldest daughter, Amanda, was born prior to their second year of law school; Elizabeth gave birth to Jacob right after John’s graduation; and Hannah arrived shortly before John joined the faculty at the Law School this past July.

With the Fees now comfortably established in their new home in Utah County, they are ready for additional adventures. Law may have won out on the career front, but music is still king on the family front. For one thing, John has a

habit of carrying around a musical instrument. Although he studied the trombone at BYU as an undergraduate, he has been concentrating on the trumpet the last few years. In Maryland he put together a little jazz band for the ward road show. The musicians enjoyed the association so much that they continued to play regularly. John smiles as he reflects on himself playing with a “bunch of teenagers.”

Not a part of any musical group at the present time, John nevertheless is surrounded by music, with his children playing the piano and the harp. Each morning the Fees sing songs for 15 to 30 minutes in addition to their scripture study. John and Elizabeth teach their children the principles of voice, to sing in parts, and to memorize songs.

Other attractions that BYU and Utah County hold for Professor Fee include mountain biking and attending plays, musical events, and the international cinema with Elizabeth. The couple have fond memories of their undergraduate years at the Y and look forward to sharing with their children the activities that brought them happiness in the past.

John Fee is not the only one who should be indebted to his teachers and mentors. Indeed, students at the J. Reuben Clark Law School and those of the next generation will be indebted to them for influencing the development of a strong legal scholar who, in turn, will shape the lives of thousands of J. Reuben Clark Law School students. With gratitude to his mentors, the BYU Law School family welcomes its newest professor, John Fee.

Linda Magleby

Serves on Primary

General Board



BY JOYCE JANETSKI

In April 1991 when Linda Magleby contemplated what she would do with her new law degree, serving on the Primary General Board of the Church wasn't what she had in mind. This past January, however, she found herself thrilled to accept a call to serve an average of 20 hours a week for five years, training ward and stake Primary leaders, writing Primary training materials, and speaking before large audiences. She knew the skills she cultivated during four years at the J. Reuben Clark Law School would be valuable, even outside a legal setting.

"Law School helps you to think analytically, to think clearly, and to write well, and these skills are transferrable

anywhere you go. You use these skills in many ways in serving in the Church," Linda says.

Aside from accepting a major Church calling, Linda has shown that she is used to curveballs in life. Her decision to go to law school with encouragement from her husband, David, came at a time when their four children ranged from 12 to 4 years old. Though she had earned a degree from the University of Utah in 1976, she found that returning to school with a family at home is no small undertaking. Nevertheless, Linda did well enough to serve on the *Law Review*.

After graduating from law school, Linda completed a judicial clerkship with Judge Stephen H. Anderson, on the

10th Circuit U.S. Court of Appeals. She then worked part-time for BYU's General Counsel Office, but after a year left to spend time with her father, who was dying from Lou Gehrig's disease. "I was so grateful to have that time with my dad, but it also gave me more time with my family," Linda says. "By the time my dad passed away in January 1995, I was feeling like I needed to be at home. I vowed I wasn't going to work until my last child was on his mission."

But then Constance Lundberg called Linda and asked her to teach a Lawyering Skills class. "I taught one year and loved it," Linda admits. "The Law School is such a treasure. I got to come in when the new

library was all in place. But it took a lot more time than I wanted to be away from home."

So Linda left the legal world and went home again. She relates: "I said, 'Here's the resolution: I'm saying no to all job offers until our youngest son is on his mission. When we get him on his mission, I will think about what I'm going to do with my law degree.' That's been the plan. Then I got a telephone call [to serve on the Primary General Board]. You change your plans."

With their youngest a senior in high school, Linda is again wondering what she "is going to do with her law degree." But part of the answer will keep her busy for the next five years.

It is an honor to speak about Ray's illustrious and distinguished career in legal education and to extol him as a colleague and a dear personal friend. In so doing, I recognize that I represent all of his friends, faculty, and staff in the Law School and his former students. I hope I can do justice to expressing our deep affection for him and convey how much we are going to miss him. Ray had a one-of-a-kind personality. The Law School will never be able to replace him.

Ray Davis was one of those fortunate individuals who loved his work, his professional career, from the first day he embarked upon it in 1953 until April of this year when he ceased teaching, a period of 47 years. Going to work was a joy. He was like the proverbial bus driver who drives his bus on holidays because it is the thing he loves most to do.

To Ray, teaching was the grandest profession there was, and the grandest subject to

However, with all of his publications, honors, and attainments, Ray did not consider his career his greatest accomplishment. In the personal piece just mentioned, he wrote, "My children . . . have been my happiness, my joy, my delight, a

two of America's most illustrious law schools. He served as a professor of law at five universities, including the University of Arizona, where he taught for 17 years, and Brigham Young University, to which he came in 1979.



lished abroad as a law reform source in foreign countries.

Ray served as the chair, a member, a principal investigator, or an advisor to countless committees, to governmental agencies of different states, and to agencies of the national government. He represented the United States at the United Nations Conference on International Legal Principles for Weather Modification. He made presentations at conferences in foreign countries and served as an advisor on the legal ramifications of cloud seeding to nine western and midwestern states. Some of his writings have been translated into French, Russian, and Spanish. A prominent legal treatise states, "Professor Ray Davis is the leading figure on weather modification law" (Robert Beck, *Water and Water Rights*, Vol. 2 Section 3.04 [a]).

In addition to all that I have mentioned, Ray was one of the most prolific writers in legal education. There has never been a time when he did not have underway a research and writing project. Constancy is his middle name. His résumé lists a total of 193 published items, including nine books and 20 chapters in books and treatises. Rather than wane, his productivity increased the closer he got to retirement.

All of this research, writing, and advising and committee work was done quietly. No attention was drawn to it. Ray did not speak of it. He was a very modest man. He was not a prima donna. A person who is modest and has nothing to flaunt is admirable, but a person who is modest and as productive and as recognized as Ray, is inspiring. Because of his modesty, his productivity did not weigh heavily upon the

In Honor of Ray Jay Davis

BY DOUGLAS PARKER

The following remarks were offered at the funeral of Ray Davis on August 15, 2000, in Provo, Utah.

teach, with one exception, was law. In a personal piece concerning his life, he wrote, "By profession I am a teacher. Few joys can equal the thrill of sharing learning with others and of watching their growth and development come about. I teach law. There is no subject other than the gospel more exciting to teach. I firmly believe that laws are 'those wise restraints which make men free.' I am proud of the role that I have had in making our legal system function."

source of pride, the cause of anxiety, a pleasure, a pain, a real need. Fatherhood of children like mine has been the greatest accomplishment of my life." Shortly after writing this, upon marrying Marilyn, he acquired four more children, whom he loved as dearly as his own. In the depths of his heart and soul, his new children became his very own.

Ray brought the finest legal education possible to bear on his professional life as a teacher. He graduated from

His research career was primarily devoted to studying and writing about the legal rules that govern, or should govern, the appropriation and use of water, particularly water contained in the earth's atmosphere.

He served as chair of a monumental project undertaken by the American Society of Civil Engineers to produce a model state water code to be transmitted to all 50 state legislatures with a recommendation for adoption and to be pub-

heads of others of us who were less productive.

Ray did all that he did in the face of significant physical challenges, from melanoma to severe arthritis that eventually required two knee replacements. Rather than use his health problems as an excuse

of cases and theory. I have been more practical and given to making systems work through implementation, regulation, and control."

All that I have said to this point is not to make Ray out as a lamb; he was also a lion who knew how to roar. His incredi-

time served with Ray on the admissions committee, which involved many meetings and the arduous task of going over many admission applications. The colleague missed a meeting and was late for the following meeting. Ray scolded him and said that was no way to fulfill

ness of God's creations." He then enumerated and described these special places that brought him close to God.

In another place he wrote, "I have known and loved many people. . . . In the final analysis it has been my family that has meant the most to me. I love

RAY WAS BLESSED AS A TEACHER WITH THE GIFT OF CHASTISEMENT.

to slow down, Ray sped up and continued to work overtime. His health did not seem to preoccupy him. He accepted his challenges in good humor and made no profession out of moaning and complaining. He was an example of how to live with adversity.

Amazingly, Ray produced all that he did without ever mastering the computer. He always joked about his inability to figure out all of the things that a computer can be made to do. He said, "All I want to do is type. I don't want all this other stuff."

Some people take such pride in the way they do things, they can't believe anyone could do it better. Not Ray. Ray was a man free of pride. He was always supportive and complimentary of the work of others. He liked all of his colleagues and spoke highly of every one of them.

About two months ago when Corene and I were out to dinner with Ray and Marilyn, I asked Ray who had taken over the areas he used to teach. He mentioned the name of a young faculty member and said, "He is far better suited to give the students what they need than I was. He approaches the subject from a different direction. He is more theoretical and stronger in conveying an understanding

ble productivity is not why he will be so sorely missed. We love him and miss him for his personal qualities, a rare unlikely mixture that at first blush might appear as a blend of incompatible qualities. He charmed us with these qualities. In one individual, the scripture that states that in the last days the lamb and the lion shall lie down together was fulfilled.

In the classroom, Ray took to heart the scriptures: Deut. 8:5: "As a man chasteneth his son, so the Lord thy God chasteneth thee." In other words, God won't let his chosen people get by with sloppy compliance with his commandments. This might be reworded: as a few teachers chasteneth their students, so the Lord thy God chasteneth thee. Psalms 94:12: "Blessed is the man whom thou chasteneth, O Lord, and teachest him out of thy law." Heb. 12:6: "For whom the Lord loveth he chasteneth."

Most people find it hard to chastise, to love by seeming to be angry. But, in spite of the scriptures just cited, Ray Davis did not. Ray was blessed as a teacher with the gift of chastisement.

Another of Ray's colleagues, senior to him when he joined the faculty, said, "Ray was no respecter of persons." This faculty member at one

one's responsibility. I asked his colleague how he reacted. He said, "I felt chastised, but not humiliated. I needed it. It was deserved and accepted without resentment, because Ray has such a high sense of justice and of what is right and wrong. I profited by it." What a marvelous compliment!

If the emperor was without clothes, Ray would tell him not only that he was without clothes but that he had better put some on and do it quickly! I've thought that I would like, if my credentials are proper, to be at his side when we approach the pearly gates, for if St. Peter does not have the entrance procedures in good order, Ray will recommend the proper correction.

On a more personal note, Ray was a person of deep feelings, a deeply sentimental individual who did not put his emotional side on public display. In the personal piece concerning his life, to which I referred to earlier, he stated with heartfelt gratitude to God, "The earth is a wondrous place to live. Its plains, meadows, forests, rivers, oceans, mountains, hills, lakes, deserts, jungles, and canyons are great marvels. But there are some of these natural wonders that I have seen that stand out. They are special to me. In them I can see the great-

the gospel and its teachings, but they are abstract without people for whom they are meant. It's the people who have been paramount in my life."

Underwriting the mellowing of Ray in the years he has been at BYU is Marilyn. She is the greatest thing that ever happened to Ray.

We, Ray's colleagues, are not only proud of Ray and Marilyn, we love them dearly.

A significant part of the joy of teaching is the enjoyment of one's colleagues, close friends with whom you share your mind and convictions, and your loyalty and love for the institution at which you teach. In doing so, we are more than our minds, more than our reason, more than our publications. We are individuals who need to be loved and who need to mean something in the lives of others. Our association with Ray and Marilyn reminds us of this.

We will miss you, Ray. We have been changed by you. You will remain a one-of-a-kind, colorful, engaging, forceful, authentic friend. We have not lost you, but we sorely grieve your temporary absence. You lifted and charmed us. We salute you, dear friend.

As Ray would have me do, I close my remarks in his behalf, and in yours and mine, in the name of Jesus Christ. Amen.

*The Seventy are . . .
called to preach the gospel,
and to be especial witnesses unto
the Gentiles and in all the world. . . .
And they form a quorum,
equal in authority to that
of the Twelve special witnesses or Apostles.*

—D&C 107:25, 34

the release of all regional representatives and “the call of a new local officer to be known as an Area Authority.” He said, “These . . . high priests . . . will continue with their current employment, reside in their own homes, and serve on a Church-service basis . . . generally for a period of [five to] six years” (Elder L. Aldin Porter, “A History of the Latter-day Seventy,” *Ensign*, August 2000, 14–20). In 1997 the prophet stated that Area Authorities would now be known as Area Authority Seventies.

Unlike General Authorities, who take assignments all over the world, Area Authority Seventies fulfill assignments within the geographic area of the Church to which they have been assigned. “We will go and do whatever the Quorum of the Twelve—or our Area Presidency—assign us to go and do,” explains James Hamula. “Area Authority Seventies are viewed not as the former regional representatives, who were assigned to specific stakes, but as Authorities having area-wide responsibility.”

Although not assigned to a number of stakes, an Area Authority Seventy may serve as a visiting authority at stake conferences. “We’ll go out on any number of weekends on assignment from the President of [the Quorum of] the Twelve to preside and speak at stake conferences,” says Michael Jensen. The Seventies also assist in the creation or reorganization of new stakes, set apart stake presidencies, and help train these presidencies.

“I am all the more convinced today than I was six months ago that this is the Lord’s Church,” says Elder Hamula. “You can’t go to a stake conference as I have and

Law Alumni Called as Area Authority Seventies

BY JOYCE JANETSKI

Three alumni of the J. Reuben Clark Law School have been called to serve as Area Authority Seventies for The Church of Jesus Christ of Latter-day Saints. The First Presidency ordained Steven E. Snow, Michael L. Jensen, and James J. Hamula to the office of Seventy and set them apart as members of the Fifth Quorum of Seventy (Area Authority Seventies serving in the United States and Canada). All three men have served as mission presidents.

The calling of Area Authority Seventy is relatively new to the Church. In April 1995 President Gordon B. Hinckley announced

reorganize stake presidencies and not feel the strong influence of the Spirit to have done what the Lord wants done. The Church is in very good hands with the quality of priesthood leaders that we have throughout the stakes.”

“As I visit different stakes and serve as a visitor at stake conference, I am overwhelmed by the goodness of people throughout the Church,” says Steven Snow. “The members are wonderful. There are a lot of people doing a lot of great things.”

The duties of Area Authority Seventies also include conducting mission tours. Once a year each mission is visited by the



Steven E. Snow

Area Authority Seventy serving that mission, who will instruct and spend time with the missionaries and mission leaders. Elder Jensen notes, “This particular assignment is really fun, because you get to associate with all of these wonderful missionaries.”

“As a mission president that had Area Seventies come to me, I certainly enjoyed it when they came,” says Elder Hamula. “But I’ve not yet had the pleasure of having that assignment. If I do, I will relish the duty above all else—I just love being with the missionaries.”

A third assignment of Area Authority Seventies is presiding at Member Missionary Coordinating Councils. The Seventy, who may serve several MMCCS within a one-year assignment, meets quarterly with a mission president and the stake presidents served by that mission. “You have a kind of a dual organization under the Area Presidency: the stakes on one hand and the missions on the other,” says Elder Hamula. “The missions overlie the stakes, and the two divisions work cooperatively. There is really marvelous structure.”

The councils provide a forum to coordinate and further missionary work. “President



Michael L. Jensen

Hinckley emphasizes the need for nurturing new converts and integrating them into the fabric of the Church,” says Elder Jensen. “There’s a desire to have an accountability name by name, one by one like the Savior did.”

Steven E. Snow, ’77, who was called as an Area Authority Seventy in the Utah South Area in April 1999, says his situation “is a little unique.” He explains, “We have only one mission in our whole area—the Utah Provo Mission—so we don’t necessarily visit missions as some Area Authorities do.

The other seven [Utah South] Area Authorities and I act like a high council to the Area Presidency, filling assignments in an area with more than 180 stakes.”

Elder Snow, with his wife, Phyllis, returned to the St. George area in June 1997 after serving as president of the California San Fernando Mission. He continued as partner in the law firm Snow, Nuffer, Engstrom, Drake, Wade & Smart, after its six founding BYU Law School graduates. The Snows have three sons and a Navajo foster son, all of whom have served missions for the Church.



James J. Hamula

Elder Snow’s past service includes 11 years on the Utah Board of Regents, the governing board for higher education, where he was vice-chair from 1987 to 1993 and chair in 1994. He also served as president of the St. George College Stake.

James Hamula, ’85, was called as an Area Authority Seventy in April 2000 to serve in the North America Southwest Area. He has worked for Gallagher & Kennedy, a law firm in Phoenix, since his release as president of the Washington D.C. South Mission in June 1997. He and his wife, Joyce, and their family live in Mesa.

“We had four children when we left on our mission—we came home with six,” says Elder Hamula. “We had twin boys born to us in the mission field. We learned that nothing in the mission field comes singly, only in sets. We look forward to having those children return to the mission field some day.”

Elder Hamula served as stake president of two Arizona stakes from 1988 to 1994. After his three years as mission president, he served as ward, then stake Young Men president before being called as Area Authority Seventy.

Michael L. Jensen, ’78, was also called in April 2000 as an Area Authority Seventy and serves in the California Hawaii Area. Released as president of the Germany Hamburg Mission in July 1998, he returned to the San Diego firm of Luce, Forward, Hamilton & Scripps, where he had worked for 11 years. “When I left, it took a leap of faith,” he admits. “Three years later, I asked to come back as a partner in the law firm; ordinarily you don’t. They were gracious in allowing me to come back. It’s taken a while to rebuild a practice, but I’m back to where I was before.”

A past bishop of the North Hollywood Third Ward, Elder Jensen has served as stake president of the Penasquitos Stake and as regional representative in the San Diego and Blythe Regions. As a young missionary he was called to the Germany Munich Mission, to serve in a country where 21 years later he would be a mission president.

Elder Jensen and his wife, Jean, are the parents of one daughter and five sons, two of whom are returned missionaries.

Law Society

Member Made

Mission President



Martin Reed Slater, '82, was called by the First Presidency of the Church to be president of the Thailand Bangkok Mission. He and his wife, Jennifer, began their service on July 1, 2000.

The parents of three children, the Slaters are members of the Torrance Second Ward, Torrance California North Stake. Martin has served as a seminary teacher, stake president and counselor, bishop, and ward Young Men president. His current calling takes him back to the mission where he served as a young man. Jennifer has filled many callings in the Young Women, Primary, Relief Society, and Scouting organizations.

Martin is the president and owner of First Water Investments, and Jennifer is the owner of a real estate management company.

Clark Memorandum Gathers Awards

Three national organizations recognized the outstanding graphic design and content of the 1999 issues of the *Clark Memorandum*.

The Council for the Advancement and Support of Education (CASE) presented the publication with a bronze medal in the special constituency magazines category of the 2000 CASE Circle of Excellence Awards Program. The prestigious award honors the spring and fall 1999 issues of the magazine, which were produced by a team including editor Scott Cameron, associate dean of the Law School; art director David Eliason; photographer John Snyder; and associate editor Joyce Janetski.

The Salt Lake City Chapter of the American Institute of Graphics Arts (AIGA) gave the *Clark Memorandum* a Copper Ingot Award. The magazine was one of 10 chosen from the 100 best pieces of design and advertising during the year, and the award recognizes David Eliason's design of the feature spread for "A Courtroom with a View," in the spring 1999 issue.

The Society of Publication Designers (SPD) presented the magazine a Merit Award for the design of a feature spread during its 35th annual competition. The award recognizes



the design for the article "Gettysburg: A Personal Essay," written by first-year law student Matthew Kennington, published in the fall issue. The spread was designed by David Eliason and Andy Goddard and photographed by John Snyder, whose additional photo of Gettysburg appeared on the cover of the magazine. Chosen from several thousand worldwide entrees, the spread was displayed in the SPD's *Publication Design Annual* and the SPD Exhibition in New York City.

Clark Memorandum

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

A Staff Among Spears

The jabs and the jeers,
Derision—and tears
On Calvary Hill
Afflicting Him still,
To this very day.
The things that we say
And do through the years
Assailing his ears,
Besieging his eyes
That still agonize,
Then piercing his heart.
But as from the start
The humble reveres
With penitent tears;
A staff among spears.

March 3, 1986

*Alex B. Darais
Professor Emeritus of Art
Brigham Young University*