

Spring 2001

# Clark Memorandum: Spring 2001

J. Reuben Clark Law Society

J. Reuben Clark Law School

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## Recommended Citation

J. Reuben Clark Law Society and J. Reuben Clark Law School, "Clark Memorandum: Spring 2001" (2001). *The Clark Memorandum*. 29.

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## Clark Memorandum

J. Reuben Clark  
Law School  
Brigham Young  
University  
Spring | 2001

Confirm Thy Soul in Self-Control



Cover Photo:

*Bradley Slade*

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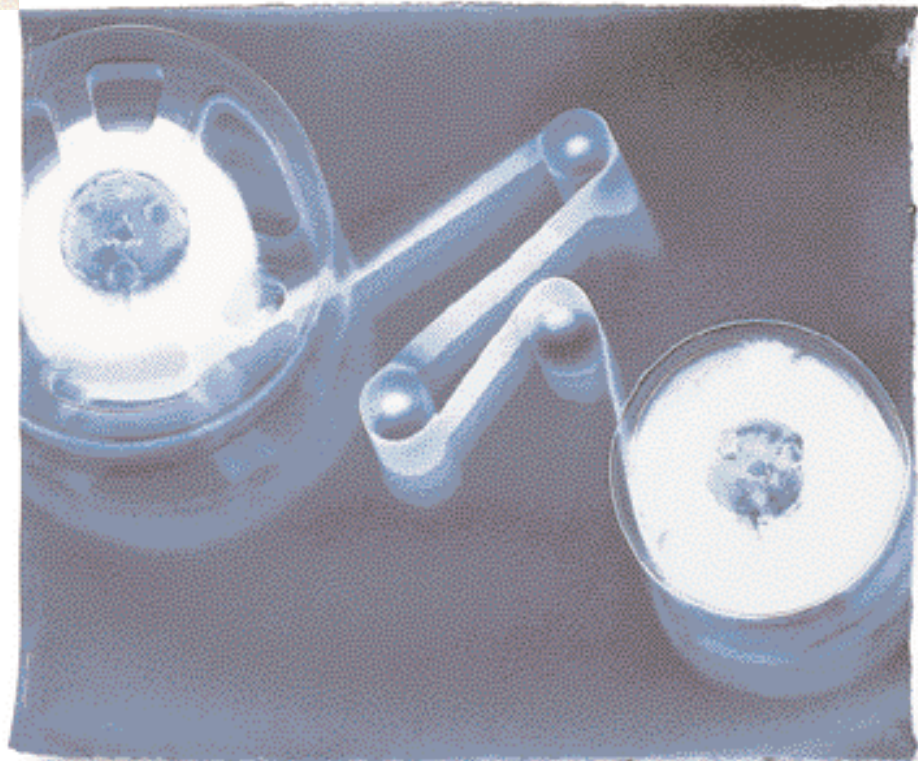


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The *Clark Memorandum*  
is published by the J. Reuben  
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The mission of the J. Reuben  
Clark Law Society is to promote  
high moral and professional  
standards in the legal profes-  
sion and service to society.  
In fulfilling its mission, the Law  
Society is guided by the phi-  
losophy, personal example, and  
values of its namesake, J. Reuben  
Clark, Jr. Those values include  
(1) public service, (2) loyalty to  
the rule of law as exemplified  
by the United States Constitution,  
and (3) appreciation for the  
religious dimension in society  
and in a lawyer's personal life.



## 2

Confirm Thy Soul in Self-Control  
*Elder D. Todd Christofferson*

PHOTOGRAPHY BY BRADLEY SLADE

# Confirm THY *Soul* IN SELF Control

by Elder D. Todd Christofferson

The following speech was presented to the Orange  
County and Los Angeles Chapters of the J. Reuben Clark  
Law Society on September 29 and 30, 2000.



It is an honor to address you, members of the J. Reuben Clark Law Society and guests. Thank you for the generosity of your invitation to speak on this occasion. As a theme for my remarks, I have borrowed a line from the well-known anthem "America the Beautiful." It is both a plea and a noble aspiration: "Confirm thy soul in self-control." While I hope that the thoughts I will offer are not inconsistent with my calling in the Church, I hasten to state that they are my own observations, opinions, and conclusions and should not be construed as a statement by or the position of The Church of Jesus Christ of Latter-day Saints.

My first job out of law school was as law clerk to the Honorable John J. Sirica, then chief judge of the u.s. District Court for the District of Columbia. It was August 1972, and within days the u.s. attorneys' office presented a grand jury indictment against Howard Hunt, Gordon Liddy, James McCord, and four Cuban-Americans for their role in the break-in at the Democratic National Committee headquarters located at the Watergate office complex in Washington. Thus began a two-year saga of legal proceedings under the rubric of "Watergate."

It was, as you can imagine, an incredible experience for one fresh out of law school, and not only for me. On one occasion in the midst of trials and hearings and White House tapes, Judge Sirica said to me, "I hope you appreciate this. Not many law clerks get an experience like this." Then after a momentary reflection, he added, "I guess not many judges do either."

I remember the feeling of pride I had in the legal profession during the argument over the grand jury subpoena to the president to produce his tape recordings of several meetings in the White House and Executive Office Building. It was an historic moment. Not since the time of Thomas Jefferson had a president of the United States been requested to produce evidence in a criminal proceeding. In Jefferson's case the matter had been resolved short of enforcement measures. There was really no precedent with respect to a contested subpoena. In the large ceremonial courtroom of the u.s. courthouse in Washington, with the statues of Solon and Moses looking on, special prosecutor Archibald Cox, representing the grand jury, and

Professor Charles Alan Wright, representing President Nixon, stood before Judge Sirica to present the case for and against the subpoena. I felt I was watching a battle of the Titans. Both were great men of the law, and in such moments I knew I had entered a noble profession. Indeed to a large extent, it was lawyers who successfully brought the nation through the Watergate crisis.

On the other hand, to some extent it was lawyers who made Watergate what it was in the first place. As I sat through the break-in trial, subsequent cover-up case, and other proceedings observing some of the defendants and witnesses who were lawyers with not so clean hands, I had moments of doubt. I began to ask myself what accounted for the difference between an Archibald Cox and a John Mitchell, both apparently decent men, both skilled in the profession, and yet one, Mr. Mitchell, apparently willing to approve a scheme of illegal electronic eavesdropping and wiretaps for a possible political advantage. I began to wonder what would protect me from succumbing to the pressures that might, in the future, come from clients or others to step over the moral and ethical line to secure a crucial advantage. I saw that, in one case, a junior White House officer about my age, in complying with his superior's orders to destroy certain files, had committed a criminal act without fully realizing it. Could I recognize in every instance, I asked myself, where the line is?

I found an answer to these concerns in the course of listening to the White House tapes. When President Nixon finally did produce the subpoenaed tape recordings of White House meetings and telephone calls, Judge Sirica screened them to identify those portions relevant to Watergate, which were, in turn, to be passed on to the special prosecutor and grand jury. With headphones, and using a tape recorder graciously provided by the White House (one of the recorders that had been used to record the tapes initially), the judge and I listened to hour after hour of meetings between Nixon, his aides John Erlichman and Bob Haldeman, legal counsel John Dean, and others.

In the course of listening in on these discussions, I became convinced that Richard Nixon had not had prior knowl-

edge of Gordon Liddy's scheming nor John Mitchell's acquiescence in those schemes. Not long after the arrests of James McCord and the Cuban-Americans at the Watergate office building, however, Nixon was informed of the relationship between the burglars and his reelection committee, learning that it had funded their activities. I deduced from the conversations that Nixon also had some information about the role of his good friend John Mitchell. It was at this point, I think, feeling the expediency of helping a friend and of avoiding embarrassment to his reelection campaign, if not to himself, that the president of the United States committed a criminal act: obstruction of justice. He approved his aides' recommendation that they get the CIA to intervene with the FBI in such a way as to throw the FBI off the money trail—the \$100 bills found in James McCord's pockets that would lead them to the Committee to Reelect the President. And so, in succumbing to the pressures of the moment, he stepped off the rock of principle.

The supposedly simple solution did not suffice for long, nor did a continuing series of expedient measures that followed. The bandages, so to speak, were always inadequate. So what began as a small cut grew and festered until it became a mortal wound. President Nixon on many occasions could have said, "No, we will not do this. We must be truthful and, if a storm comes, ride it out." It would have required courage, but, had he done so, there would have been no Watergate as it came to be and no resignation under threat of impeachment.

Some do "get away with" dishonest or unethical, even immoral conduct in this imperfect world, but there is no real security except in the consistent adherence to principle. If one ever makes an exception, as did the president with Watergate, his safety evaporates. Contrary to the opinion of some, I do not think President Nixon was a bad man nor that an evil nature accounts for his mistakes. I believe he was essentially a good man who allowed himself exceptions to the moral standard he generally lived by. Watergate taught me that any exception to moral principle, no matter how well reasoned or rationalized, poses a real danger to individuals, to the

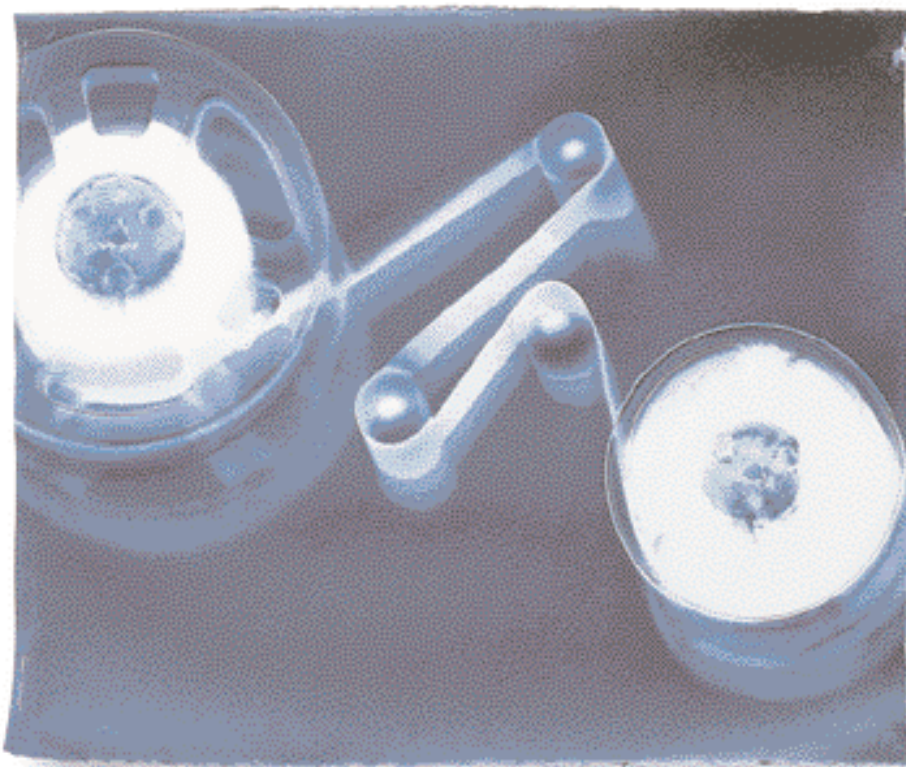


rule of law, and to society. In the words of Pope John Paul II:

*When it is a matter of the moral norms prohibiting intrinsic evil, there are no privileges or exceptions for anyone. It makes no difference whether one is the master of the world or the "poorest of the poor" on the face of the earth. Before the demands of morality we are all absolutely equal.'*

In one sense, the ABA's Model Rules and Code of Professional Responsibility work against us as we seek to adopt and guide by high moral norms without exceptions. They do this, at times, by focusing on very fine points and close distinctions, encouraging in some a tendency to rationalize and a propensity to walk as closely to the line as possible, though they hope not to cross it. In a 1996 article in the *Wisconsin Law Review*, Professor Marianne M. Jennings, a 1977 graduate of the BYU Law School, took a good-humored swipe at what sometimes comes across in the Code and the Rules as a search for loopholes and exceptions. She titled her article "The Model Rules and the Code of Professional Responsibility Have Absolutely Nothing to Do with Ethics: The Wally Cleaver Proposition as an Alternative."<sup>2</sup> Reviewing a series of headlines reporting the actions of certain lawyers that clearly violated basic moral standards of honesty and fairness, Professor Jennings observed:

*Somehow I envisioned the practice of law as something a bit more noble than seeing how much I could get away with. And here we reach the central thesis of this piece: Can we move to a higher standard than how much we can get away with? [Footnote 19: I call this thesis the Cleaver proposition, named after the infamous Wally who said, "You know, Beaver, there's only so much junk you can get away with before you get creamed." Getting creamed at Mayfield Elementary meant something different than getting creamed as a lawyer. But the underlying principle is the same: sooner or later we get in trouble when we engage in junky behavior. The public perception is that lawyers have the emotional maturity and behavior of Beaver Cleaver. We're getting closer to being creamed every day. James H. Cossitt pro-*



*Watergate taught me that any exception to moral principle, no matter how well reasoned or rationalized, poses a real danger to individuals, to the rule of law, and to society.*

*posed a less star-studded approach to lawyer ethics. He wrote that conduct by lawyers should survive the "smell" test. (See James H. Cossitt, "The Smell Test," Bus. L. Today, July-Aug. 1996, at 8.) Wally would put it this way: "Gee, that really stinks."*<sup>3</sup>

I am not suggesting that we abandon the Model Rules and Code of Professional Responsibility. These and the opinions of the ABA Standing Committee on Ethics and Professional Responsibility can be of significant practical help in supporting and reinforcing our commitments to speak truthfully, honor obligations, and respect confidences. They define a line that once crossed mandates disciplinary action. But we should not expect rules to perform a task that, by their nature, they

cannot achieve. They simply cannot fill the role of ultimate compass or guide.

Codes and rules can serve to strengthen praiseworthy commitments on the one hand or to encourage "what-can-I-get-away-with" lawyering on the other. The outcome depends on whether or not we remain loyal to the fundamental values or principles that underlie the rules. Cut loose from the core principles that have supported our civilization for centuries, ethical norms lose their vitality, just as a branch cut from a tree or a plant severed from its roots.

President J. Reuben Clark, Jr., had this concept in mind when he addressed religious educators of The Church of Jesus Christ of Latter-day Saints nearly 60 years ago. To these instructors of teenagers and young adults he said:

*The teaching of a system of ethics to the students is not a sufficient reason for running our seminaries and institutes. . . . The students of seminaries and institutes should of course be taught the ordinary canons of good and righteous living, for these are part, and an essential part, of the Gospel. But there are the great principles . . . that go way beyond these canons of good living. These great fundamental principles also must be taught to the youth; they are the things the youth wish first to know about. . . .*

*. . . [W]e shall not feel justified in appropriating one further tithing dollar to the upkeep of our seminaries and institutes unless they can be used to teach the Gospel in the manner prescribed. The tithing represents too much toil, too much self-denial, too much sacrifice, too much faith, to be used for the colorless instruction of the youth of the Church in elementary ethics.<sup>4</sup>*

President Clark correctly perceived that ethics do indeed become “colorless” without the foundation of moral principles that endow those ethics with life and vigor. These principles are often rooted in venerable religious doctrines like those embodied in the commands, “Thou shalt love thy neighbor as thyself” (Leviticus 19:18; Mark 12:31), “Thou shalt not bear false witness” (Exodus 20:16), and “Honor thy father and thy mother” (Exodus 20:12). Emanating from such teachings are the principles of service, compassion, honesty, fairness, loyalty, responsibility, and justice. These give essential vitality to codes and canons, which then can reinforce and help clarify the application of these guiding principles.

The great benefit of a life founded on principle is that it permits self-direction and self-government. The law that governs one’s conduct is within; external rules are secondary or supplementary. This affords maximum liberty in professional life and in life generally—not maximum license, but maximum liberty. When principles guide choices, few rules are needed. Principles can move from one situation to another providing a paradigm that focuses the facts and points a proper course. Rules alone are not up to that task. We can never conceive and draft enough rules to cover all events and circumstances, and, even if we could, who could ever read and remember them all? Model rules and a

code were not what Richard Nixon needed. He needed an unwavering commitment to honesty. In Nixon’s case, lodestar principles could have guided him successfully through the Watergate minefield, or rather would have enabled him to stop Watergate in its tracks at an early stage.

So it is with the brotherhood and sisterhood of the bar. Ethical rules cannot replace moral principles. If a commitment to principles is lacking, we can never produce an adequate volume of rules as a substitute or a sufficiently large army of monitors and bureaucrats to enforce them. John Adams, our second president, is reported to have said, “Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”<sup>5</sup> Similarly, if lawyers cannot largely govern themselves by principle, no written constitution or code will suffice to force us onto an ethical path.

The proliferation of rules of conduct in the profession and of rules and regulations in society is simply testament to the fact that our commitment to principles is diminishing. Self-control, and the sense of responsibility that engenders it, are not much emphasized. The tendency is rather to focus on rights and encourage individuals to see the rest of the world as responsible to affirm their rights. Responsibility is shifted to others.<sup>6</sup>

Not long ago I was a guest of the Museum of Tolerance at the Simon Wiesenthal Center in Los Angeles. One interactive exhibit focusing on personal responsibility is called the “Point of View Diner.” It is designed as a traditional 1950s diner complete with a counter and booths, red vinyl seats, and individual jukeboxes that are actually computer monitors. At one end of the diner is a large television screen showing a simulated nightly news program. The news program I saw was the report of a fictional accident in which a drunk teenage driver, returning from the prom with his date, ran into another vehicle and was killed. The screen shows the aftermath—a close-up of the death car where police and firemen are working to free the injured girlfriend. Looking on in anguish is the dead teenager’s mother.

On the jukebox screen one can see the players of this drama and hear them answer questions that the visitor selects from a list on the screen. For example, in one response, the injured girlfriend, who used a fake ID to buy liquor for Charlie, the deceased driver, says, “I loved Charlie; it’s not my fault! Everyone drinks. Give me a break! He asked me to get it; I didn’t make him drink it.” The liquor store owner asserts it is unrealistic to expect him to determine the validity of every ID. “The problem isn’t me. Don’t you think the responsibility lies with the kid who got drunk?” Charlie’s mother acknowledges that she knew about his drinking but is defiant in reaction to a question implying that her own lax parenting had something to do with the tragedy.

After having seen the news report and the answers to these interview questions, visitors use buttons on the jukeboxes to vote on the comparative responsibility of the players: Charlie, his date, his mother, and the liquor store owner. The levels of responsibility are ranked one through five, five being the highest.

My guide made a surprising comment about the reaction of high school students. The vast majority assign a very low level of responsibility to Charlie for what happened. They see the mother, the liquor store owner, and Charlie’s date as more at fault than Charlie himself, who chose to drink and who caused the accident in which he was killed. After reflecting about this attitude, it seems to me to reflect a philosophy that is gaining acceptance among all age groups in our society. It is a philosophy in which each person sees himself or herself more and more the victim of circumstance and other people’s choices, and therefore, less and less responsible for his or her own choices and their consequences.

If you can shift responsibility for your life to parents, friends, teachers, society, or even God, you can excuse in yourself any failing and will expect others to make right any trouble that comes your way or that you cause for others. This desire to evade responsibility is not a new phenomenon; throughout history people have been tempted to take this easy way out. When Moses returned from his 40 days on



Mt. Sinai and called Aaron to account for making the golden calf, Aaron responded:

*Let not the anger of my lord wax hot: thou knowest the people, that they are set on mischief.*

*For they said unto me, Make us gods, which shall go before us: for as for this Moses, the man that brought us up out of the land of Egypt, we wot not what is become of him.*

*And I said unto them, Whosoever hath any gold, let them break it off. So they gave it me: then I cast it into the fire, and there came out this calf.<sup>7</sup>*

No, seeking to avoid or deny the unpleasant demands of responsibility is not new in this world. What is new in our time is how widely the philosophy of irresponsibility is being accepted and even institutionalized. For example, current trends in tort law are modifying the traditional rules of negligence to require that every victim of an accident be compensated by people who have money, whether or not the people with money play any material role in causation. We seem to be heading toward the creation of some general right to be compensated by someone, somewhere, for every misfortune or disappointment that occurs in life. One wonders, when we have all become victims, who will be left to compensate us?

The doctrine found in the scriptures is something quite different. God requires those of us who are accountable, who have the capacity of choice, to assume responsibility for ourselves. He gives us our moral agency and expects us to guide our lives according to true principles. Among other things, this means that we are obligated to repent when we make mistakes. If we were not obligated to confess and change and make restitution, if our behavior was glossed over and God was responsible to handle the consequences, we would be nothing more than his puppets. Anything that happened in our lives and what became of us in the end would depend entirely on His interventions. That, you will recall, was Lucifer's idea about how things should operate. He, in fact, would have been more than happy to take care of everything and control our lives. He volunteered to do it. But if we jettison

responsibility, we also forfeit self-control and the liberty it makes possible.

My plea is that we do what we can to inspire principled conduct and acceptance of responsibility, first in ourselves, next at home, and then wherever our influence extends. This is not simply for the great decisions and moments in life, but most important, in the minutiae of daily life. In a commencement address delivered in April 1994 at Brigham Young University, John Q. Wilson, a political science professor at UCLA, noted that simple acts of personal responsibility are both the hardest and the most important work we have to do. He said:

*Commencement speakers are supposed to urge you to rise to the highest challenge, pursue the impossible dream, excel at the loftiest ambitions. I will not do that. It is too easy, and too empty. The easiest thing to do is to support great causes, sign stirring petitions, endorse grand philosophies. The hardest thing to do—and it is getting harder all the time—is to be a good husband or wife, a strong father or mother, an honorable friend and neighbor.*

Professor Wilson continued:

*The truly good deeds are the small, everyday actions of ordinary life: the employee who gives an honest day's work; the employer who rewards loyalty and service; the stranger who stops to help someone in need; the craftsman who builds each house as if he himself were going to live in it; the man who unhesitatingly accepts responsibility for the children he has fathered; the father who wants the respect of his children more than admission to the executive suite; the mother who knows that to care for an infant is not an admission of professional failure; the parents who turn the television off even when their children want to watch just one more hour of some bit of Hollywood drivel; the neighbors who join together to patrol a neighborhood threatened by drug dealers; the hiker who carries his own trash out of the park; the landlord who paints out the graffiti without waiting for the city authorities; the juror who judges another on the basis of the principle of personal responsibility before the law. These are the heroes of daily life. May you join their ranks.<sup>8</sup>*

There can be no substitute for self-control based on internalized true principles. By personal experience I know that, after all we can do, we may rely on One whose love we little comprehend to do what we cannot. I honor the Savior and bear witness of His grace. I pray His rich blessings upon you.

#### NOTES

<sup>1</sup> John Paul II, *The Splendor of Truth: Veritatis Splendor*, para. 96 (1993); cited in Robert J. Muisse, "Professional Responsibility for Catholic Lawyers: The Judgment of Conscience," 71 *Notre Dame Law Review* 771 at 781–82 (1996).

<sup>2</sup> Marianne M. Jennings, "The Model Rules and the Code of Professional Responsibility Have Absolutely Nothing to Do with Ethics: The Wally Cleaver Proposition as an Alternative," 1996 *Wisconsin Law Review* 1223 (1996).

<sup>3</sup> *Id.* at 1227.

<sup>4</sup> J. Reuben Clark, Jr., "The Charted Course of the Church in Education," in *J. Reuben Clark: Selected Papers*, ed. David H. Yarn, Jr., BYU Press, Provo, Utah, 1984, pp. 249, 254.

<sup>5</sup> Cited in *Teachings of Ezra Taft Benson*, Ezra Taft Benson, Bookcraft, Salt Lake City, Utah, 1988, p. 597.

<sup>6</sup> The thoughtful Russian dissident and historian Aleksandr Solzhenitsyn, in an interview with *Time* magazine several years ago, responded to this question: "You have said the moral life of the West has declined during the past 300 years. What do you mean by that?" Solzhenitsyn responded:

*There is technical progress, but this is not the same thing as the progress of humanity as such. In every civilization this process is very complex. In Western civilizations—which used to be called Western-Christian but now might better be called Western-Pagan—along with the development of intellectual life and science, there has been a loss of the serious moral basis of society. During these 300 years of Western civilization, there has been a sweeping away of duties and an expansion of rights. But we have two lungs. You can't breathe with just one lung and not the other. We must avail ourselves of rights and duties in equal measure. And if this is not established by the law, if the law does not oblige us to do that, then we have to control ourselves. When Western society was established, it was based on the idea that each individual limited his own behavior. Everyone understood what he could do and what he could not do. The law itself did not restrain people. Since then, the only thing we have been developing is rights, rights, rights, at the expense of duty ("Russia's Prophet in Exile," *Time*, July 24, 1989, 60).*

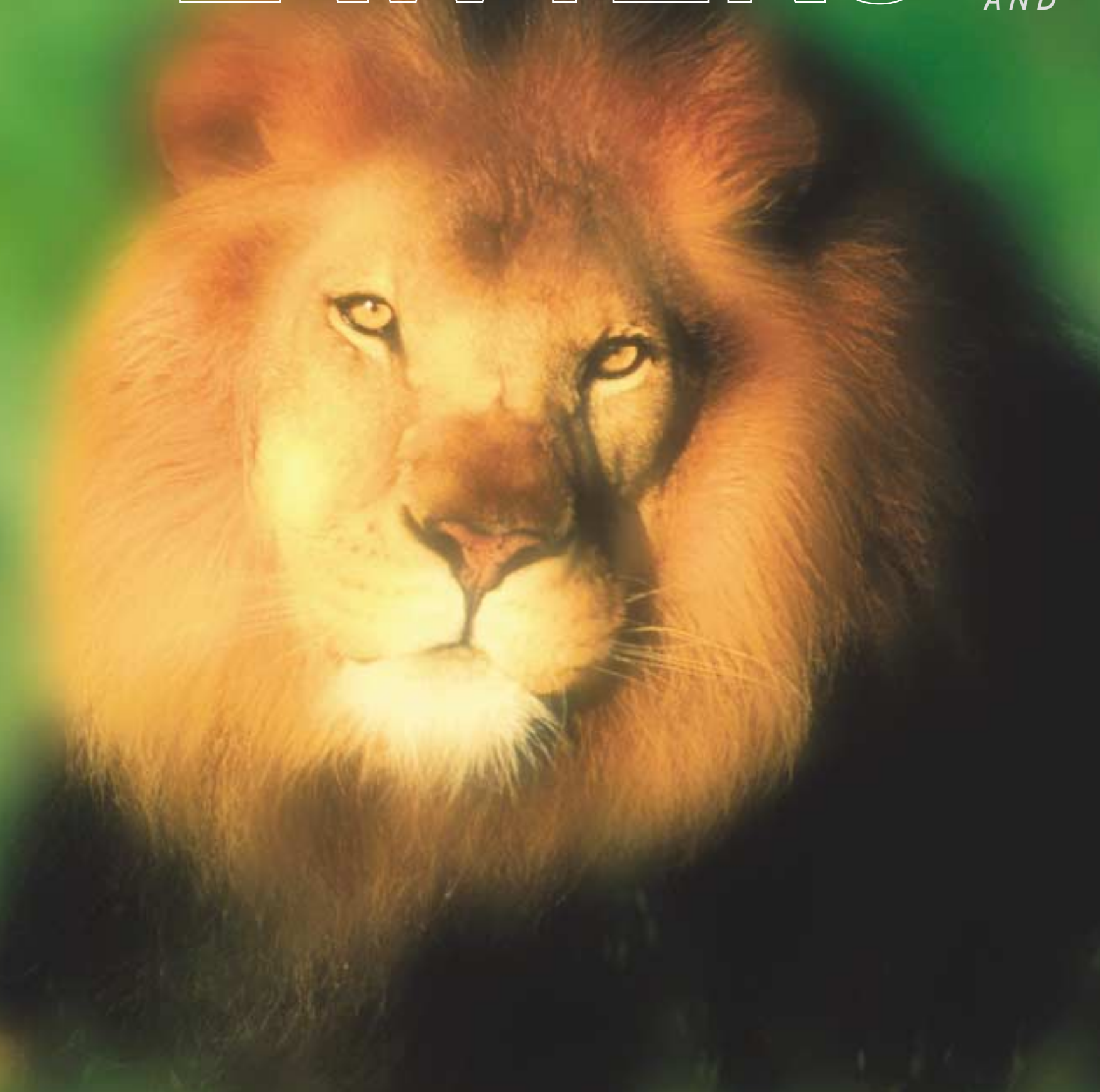
<sup>7</sup> Exodus 32:22–24.

<sup>8</sup> John Q. Wilson, "The Moral Life," Brigham Young University commencement address, April 21, 1994.

Elder D. Todd Christofferson is a member of the Presidency of the Seventy of The Church of Jesus Christ of Latter-day Saints.

# LAWYERS

*AND*



BY THOMAS B. GRIFFITH

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# THE ATONEMENT



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**Aloha.** I am honored to be here today to speak to students, faculty, and staff at Brigham Young University—Hawaii. As was mentioned, I am a graduate of the College of Humanities at the “other” BYU, and I must say that the decision to attend BYU and participate actively in the unique blend of the life of the mind and the life of the spirit offered at Church schools is among the most important decisions I have made in my life. I congratulate you on your choice of schools, and I encourage you to take full advantage of that which is uniquely offered at a university that has at its core purpose the worship and adoration of the Risen Lord Jesus Christ and the commitment to making of its students disciples who will actively prepare themselves, their families, and their communities for His return.

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# THERE WAS A TIME

when most universities shared a common purpose. The pursuit of an education was not seen simply as a means to enter the workforce; rather, education was a component of discipleship: the acknowledgment that God was sovereign and that the pursuit of knowledge was the pursuit of the Divine. As a student at BYU more than 20 years ago, I heard a great rabbi-scholar, Jacob Neusner, lecture on a common trait of Judaism and Mormonism, the idea captured in the phrase “the glory of God is intelligence,” from the Doctrine & Covenants.<sup>1</sup> Dr. Neusner said of Judaism that which hopefully can be said of your experience here at BYU—Hawaii:

*The most distinctive and paramount trait of Judaism as it has been known for the past two thousand years is the conviction that the primary mode of the service of God (not the sole mode, but the paramount one) is the study of Torah. Torah is revelation. Torah, by its content and its nature, encompasses all of God-given knowledge. . . . It is Torah which reveals the mind of God, the principles by which He shaped reality. So studying Torah is not merely imitating God . . . but is a way to the apprehension of God and the attainment of the sacred.<sup>2</sup>*

While driving to the airport yesterday morning, my wife, Susan, asked me the title of my remarks. When I told her I would be speaking about “Lawyers and the Atonement,” she laughed. My topic isn’t supposed to be funny. One theory of humor is that we are amused when we see joined together those things that don’t belong with each other, and for most people, lawyers and the Atonement of Christ don’t belong together. Putting them together, some will say, “is like fitting wings on a pig: You and the pig look

ridiculous, and the pig still isn’t going to fly.”<sup>3</sup> Well, I’m going to try to make this pig fly. I hope I don’t look too silly in the attempt.

Several weeks ago, I was teaching our 10-year-old, Tori, some lawyer jokes. I started with my favorite one. You may have heard it before. It goes like this: “Have you heard that scientists are now using lawyers instead of rats for lab experiments? The scientists have given three reasons for this change. First, lawyers are more plentiful than rats. Second, lab assistants grow fond of the rats. And third, you know, there are just some things that rats won’t do.” Well, Tori didn’t understand that joke. So I tried another. “Tori,” I said, “What do you call 100 lawyers thrown into the river?” Now the answer to that question is supposed to be “A good start,” but Tori, not knowing that, supplied her own answer: “Pollution.”

Earlier this week, I confronted a similar view not just of my profession in general, but—more troubling—of my personal role as a lawyer. Nine months ago the governor of Virginia, Jim Gilmore, asked me to serve as general counsel to the Advisory Commission on Electronic Commerce, a commission created by Congress to study and make proposals how Congress should approach the thorny issue of whether a person should have to pay taxes on goods purchased over the Internet. The commission comprised 19 distinguished individuals including three governors, the chairman of AT&T, the president of America Online, the president of MCI-WorldCom, the president of Time-Warner, the president of Charles Schwab, and the president of Gateway. The commission held its last meetings earlier this week in Dallas, Texas, and as was reported in the national media, it was contentious. As general counsel, I was called upon to offer my opinion on a divisive topic. The opinion I offered gave support to a position that Governor Gilmore had pursued and that was vigorously opposed by a minority on the commission. I came under some heavy public criticism by some of those commission members. The controversy was reported widely in the media, and my name was mentioned in a *New York Times* article in

a way that I thought unfairly characterized what took place. The day the article appeared, I went and spoke with the reporter. I explained what had taken place and tried to place it in a larger context that would help him see the error of what he had written. He listened respectfully and said, “Tom, it isn’t anything personal. I know what you were doing. Lawyers are hired guns, and you were doing what was necessary so that your client, Governor Gilmore, could do what he wanted to do.”

Without boring you with the details of the matter, you’ll need to trust me that this assessment was flat-out wrong. I tried to explain to him why he was wrong, but



I had the distinct impression that he was not persuaded. In his mind I was a “hired gun” willing to do anything to help the client do what he wanted. Gee, even rats won’t do some things.

Now, I didn’t have this problem with my prior career. I was a director in the Church Educational System’s Department of Seminaries and Institutes. I was responsible for delivering weekday religious education to LDS high school and college-age students in the Baltimore, Maryland, area. Yet, I left that wonderful vocation to pursue a career in the law. What you will hear today are my musings about that decision.

This annual presidential lecture was presented at Brigham Young University—Hawaii on March 23, 2000.

The inspiration for my remarks came several years ago while I was sitting in a priesthood lesson on “building Zion.” The next day I was to speak at the “other” BYU about being Senate legal counsel, the chief legal officer of the United States Senate. Talks at BYU should be different than talks at other universities, because you have a freedom here to explore how the Atonement affects every aspect of life. That priesthood lesson got me thinking about the relationship between being a lawyer and the Atonement of Christ.

Let’s go back to March 1830. The 24-year-old Prophet Joseph Smith has culminated a 10-year period of divine tutoring



by publishing to the world the Book of Mormon, another testament of Jesus Christ, and restoring the Church of Jesus Christ. He and his band of followers number a few hundred. His primary daily activity is organizing the fledgling Church according to a biblical model revealed to him from the Lord. He is engaged in an intensive study of the Bible. The Lord wants Joseph to be immersed in that holy record so that he will be open to receive the revelation he needs to found and direct the Church on correct principles. Sometime during that first year of the infancy of the Church, while studying, pondering, and praying over the Book of Genesis, the Lord reveals to Joseph Smith the remarkable story of a major prophet

who is mentioned only briefly in the current version of Genesis. The prophet is Enoch, and his story is to become a model for the infant Church. What Enoch created among his people became the goal for these early Latter-day Saints:

*The fear of the Lord was upon all nations, so great was the glory of the Lord, which was upon his people. And the Lord blessed the land, and they were blessed upon the mountains, and upon the high places, and did flourish.*

*And the Lord called his people Zion, because they were of one heart and one mind, and dwelt in righteousness; and there was no poor among them.*

*And Enoch continued his preaching in righteousness unto the people of God. And it came to pass in his days, that he built a city that was called the City of Holiness, even Zion.<sup>4</sup>*

From what we can tell, what Enoch and his people achieved has never been duplicated. The Saints at Jerusalem in the days of the Apostles came close.<sup>5</sup> Those Book of Mormon people who witnessed the post-Resurrection visit to ancient America of the Risen Lord Jesus laid the foundation for a Christ-centered culture that endured for 200 years.<sup>6</sup>

But it was Enoch and his people that captivated the mind and soul of Joseph. Following their example became the rallying cry. Preparing a people who were ready to meet the Lord became the watchword. And what was it about the people of Enoch that allowed them to model for us perfectly what it means to prepare to meet the Lord? The key, I believe, is in verse 18:

*And the Lord called his people Zion, because they were of one heart and one mind, and dwelt in righteousness; and there was no poor among them.<sup>7</sup>*

The people of Enoch achieved “at-onement” with God, with themselves, with their families, and with their community. They set the mark for true spirituality. Spirituality begins with allowing the effects of Christ’s atoning sacrifice and His awe-inspiring grace to heal the wounds that sin has inflicted upon our

broken hearts. Spirituality begins with uniting us with God from whom we have been separated by sin. But from Enoch and his people we learn—and the powerful symbolism of the Sacrament of the Lord’s Supper and the temple endowment confirms this—the highest form of spirituality is when we work to make the effects of the Atonement radiate beyond ourselves and our families to unite our communities. The work of community building is, I believe, the most important spiritual work to which we are called. All other work is preparatory.

Here is the insight I offer for you to consider. To build a community that extends beyond your family or congregation—and I believe we are compelled by our understanding of the Atonement of our Savior to do just that—involves law. Properly understood, the highest and most noble role of a lawyer, then, is to help build communities founded on the rule of law. By doing so, lawyers are participating in the redeeming work of the atoning power of the Savior at its zenith. To be sure, the working out of the power of the Atonement occurs initially at the intimate level of a sinner realizing her individual need for God’s grace. But it must also ultimately include creating a community based on the rule of law.

The rule of law is the idea, of staggering importance in the progress of humankind, that a community should not be organized according to the principle that might makes right. Rather, a community and its laws should reflect the reality that each person is a son or daughter of God and by virtue of that fact alone is entitled to be treated with dignity, respect, and fairness. The most famous and influential expression of this radical idea came from the pen of Thomas Jefferson, Virginia’s greatest son and the founder of my other alma mater:

*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.*

*That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.<sup>8</sup>*

Jefferson was correct to ground the rule of law in the fact that there is a God who has created and endowed each human with rights. But as Christians we know there is more to it than that. We know that each human has dignity not only because he has been created by God, but because he has also been redeemed by God. The Lord Jesus Christ suffered, bled, and died for each member of the human family so that everyone who accepts His act of gracious love would have access to the power of His redemption. As Latter-day Saint Christians, we have significant insights into Christ's redemptive love that must be at the core of who we are as a people and what we are doing in our lives and in the world.

Let's return again to the year 1830. Joseph Smith has spoken with the Father and the Son. He has, by the gift and power of God, translated the Book of Mormon, a powerful second witness to the Bible of the power of Christ's atoning sacrifice. He has received priesthood authority under the hands of angelic messengers, John the Baptist, Peter, James, and John. He stands ready to restore to the earth the Church of Jesus Christ—the vessel that will become the primary means by which the Lord will prepare the world for His Second Coming and millennial reign. And yet there is a final lesson the young Prophet must learn. In many ways, I believe it to be the most important lesson he needed to learn—the capstone of his divine tutoring. Before Joseph Smith could organize anew Christ's Church, he needed to understand that every activity of that church must be done with one thing in mind. The stage for this final lesson had been set a year before in a revelation from the Lord:

*Remember the worth of souls is great in the sight of God;*

*For, behold, the Lord your Redeemer suffered death in the flesh; wherefore he suffered the pain of all men, that all men might repent and come unto him.<sup>9</sup>*

Joseph knew, as all of Christendom knew, that God's love for His children was manifest in the life and death of His Son. He knew that "God so loved the

world, that he gave his only begotten Son."<sup>10</sup> He knew, as did all who loved and treasured the Bible, that Christ suffered for us in Gethsemane and on the cross at Calvary.

But what Joseph did not know, what no one in the world knew, is the extent of the Savior's personal suffering for us. That knowledge, indispensable to one who would deign to act in the name of the Lord, came to Joseph Smith in a revelation now found in the Doctrine and Covenants, chapter 19. It was the last recorded revelation Joseph Smith received before he organized the Church in April 1830. It was the final, indispensable lesson for him. It is an indispensable lesson for us. In my view, this revelation and the insight it affords into the breadth and depth of the Savior's gracious love for all humankind is the most significant lesson of the restored gospel. If all we had from the Restoration was this knowledge alone, I would say, as our Jewish brothers and sisters say at Passover when recounting each act of God's message, "Dayenu" ("It is enough.").

In section 19, the Lord takes Joseph Smith (and us) with Him back to the Garden of Gethsemane, the scene of some of His most agonizing moments:

*For behold, I, God, have suffered these things for all, that they might not suffer if they would repent;*

*But if they would not repent they must suffer even as I;*

*Which suffering caused myself, even God, the greatest of all, to tremble because of pain, and to bleed at every pore, and to suffer both body and spirit—and would that I might not drink the bitter cup, and shrink—*

*Nevertheless, glory be to the Father, and I partook and finished my preparations unto the children of men.<sup>11</sup>*

For this next thought I rely upon the insight of Eugene England, who notes that the Lord's description of His suffering in verse 18 is incomplete.<sup>12</sup> The hyphen at the end of the phrase leads me to believe that the Lord could not describe to the Prophet Joseph the full extent of His agony and suffering for us, even some 1,800 years after it took place. It was just

too painful for Him to recount, even after all those years.

As Latter-day Saints, we, of all people, should value the worth of souls, because we have resources that teach us the depth of the Lord's love for each member of the human race. If our Savior has been willing to endure such suffering for our fellowmen, how can we do anything but exert all our efforts to serve them, too.

It was the great C. S. Lewis who, with an uncommon understanding of the Lord's love for His children, wrote:

*The load, or weight, or burden of my neighbour's glory should be laid on my back, a load so heavy that only humility can carry it. . . . It is a serious thing to live in a society of possible gods and goddesses, to remember that the dullest and most uninteresting person you can talk to may one day be a creature which, if you saw it now, you would be strongly tempted to worship. . . . It is in the light of these overwhelming possibilities, it is with the awe and circumspection proper to them, that we should conduct all our dealings with one another, all friendships, all loves, all play, all politics. There are no ordinary people. You have never talked to a mere mortal. . . . Next to the Blessed Sacrament itself, your neighbour is the holiest object presented to your senses.<sup>13</sup>*

The rule of law, the idea that each human being is entitled to the protection of the law, is most firmly rooted and grounded when we approach an understanding of what the Savior has done for each human being. Thus, the calling of lawyers is to build communities based on the rule of law, communities that reach us in the direction of a Zion society, a place where the power of the Atonement unites us.

At this point I should have persuaded each of you to change your plans and go to law school and to believe that together we will change the world. But before you do, let me issue you a warning. I hope when you hear this warning you will see that I realize that the picture of lawyering I have just painted is, shall we say, idealized. I am well aware of the fact that most lawyers are hardly the primary emissaries of the Atonement. Remember the pig with wings.



To deliver this warning, I turn to a play written by Robert Bolt, *A Man for All Seasons*. The play is based on the last years of the life of Sir Thomas More, the patron saint of lawyers. More lived in 16th-century England and was lord chancellor, an aide to King Henry VIII, like today's prime minister. After the king, More was the most powerful person in England. He was also the most widely respected, because of his piety and erudition. He was a leader of the "new learning" that was the hallmark of the Renaissance. More was a devoted family man and a father who was actively involved in the education of his children—most remarkably for his time, that of his daughters. He was also a passionate churchman, a devout Roman Catholic, who, although he saw much in the church that needed reform, was committed to the church that he believed was founded by the Lord.

More found himself caught between his allegiance to the crown and the church when Henry declared himself head of the English church and renounced the authority of the pope. To secure his position, Henry required each of his subjects to swear an oath of allegiance recognizing him as supreme head of the Church of England. More refused, resigned his office, and was eventually imprisoned for his recalcitrance.

The climatic scene of the play is the trial of Thomas More. The charge is treason. The penalty is death. More's nemesis, Thomas Cromwell, is his chief prosecutor. Lord Norfolk, More's good friend, is his reluctant judge. Cromwell knows that More has done nothing worthy of the charge of treason. Although he has refused to swear to the oath, More has been silent as to his reasons, knowing that under the law his silence should protect him.

Cromwell's ruse is to find a witness who will perjure himself and accuse More of speaking out against the king. He finds a willing witness in one Richard Rich. Early on in the play we meet Rich as an aspiring young man who frequents the household of Thomas More. He is hoping to gain More's favor and win an appointment to government office. More, however, sees in Rich a weakness of character

that would make him ill-suited to hold a position of power where he would be the target of bribes. More tells Rich that he will not help him find an office in government and counsels him instead to "go where he won't be tempted."<sup>4</sup> In disappointment, Rich turns to Thomas Cromwell, who rewards Rich with government posts in exchange for Rich's increasingly diabolic participation in a conspiracy to bring down More.

The stage is now set for the finale: More, the accused, beaten down from months of imprisonment in the Tower of London, sits alone in the court dressed in a simple monk-like tattered gown. Rich, decked out in the finery of a dandy, is called as the witness. He takes an oath to tell the truth and then perjures himself by falsely testifying that More made treasonous statements to him.

More, knowing that this perjured testimony will lead to his death, speaks:

MORE: *In good faith, Rich, I am sorrier for your perjury than my peril.*

NORFOLK: *Do you deny this?*

MORE: *Yes! My lords, if I were a man who heeded not the taking of an oath, you know well I need not be here. Now, I will take an oath! If what Master Rich has said is true, then I pray I may never see God in the face! Which I would not say were it otherwise for anything on earth. . . .*

MORE: *Is it probable—is it probable—that after so long a silence on this, the very point so urgently sought of me, I should open my mind to such a man as that?*<sup>5</sup>

Cromwell excuses Rich from the stand. As Rich steps down and proceeds to exit, More says to Cromwell:

MORE: *I have one question to ask the witness. (Rich stops.) That's a chain of office you are wearing. (Reluctantly Rich faces him.) May I see it? (Norfolk motions him to approach. More examines the medallion.) The red dragon. (To Cromwell) What's this?*

CROMWELL: *Sir Richard is appointed Attorney General for Wales.*

MORE: *(Looking into Rich's face with pain and amusement) For Wales? Why, Richard, it profits a man nothing to give his soul for the whole world. . . . but for Wales?*<sup>6</sup>

Now, my ancestors are from Wales, but I get the point. What is it that we are willing to gain in this world at the price of the loss of our souls?

The Savior warns us of one category of activity that almost always is pursued and gained at the cost of our souls, and it is a warning that each of us would do well to heed, living as we do in such affluent and materialistic times.

Remember the words of the Savior to his disciples after they had seen the rich young man who turned down a call from the Savior to join them because he was unwilling to sell his many possessions, give the proceeds to the poor, and follow Jesus and the disciples. "I tell you the truth," Jesus said. "It is hard for a rich man to enter the kingdom of heaven. Again, I tell you, it is easier for a camel to pass through the eye of a needle than for a rich man to enter the Kingdom of God." When the disciples heard this, they were greatly astonished and asked, "Who then can be saved?" Jesus looked at them and said, "With man this is impossible, but with God all things are possible."<sup>7</sup>

It is C. S. Lewis' view that the "riches" referred to by the Lord here cover more than riches in the ordinary sense. He believes "it really covers riches in every sense—good fortune, health, popularity, and all the things one wants to have."<sup>8</sup> If Lewis is right (and C. S. Lewis is almost always right when it comes to matters of discipleship),<sup>9</sup> each of us stands in peril to the extent that our trust, our desire, and our passions are motivated by anything other than a profound sense of gratitude to the Savior for His atoning sacrifice. President Spencer W. Kimball had strong words for us on this point. He said that if we are motivated by "riches," we are latter-day "idolaters."<sup>10</sup>

In his mercy, where the Lord provides such an ominous warning, He always provides a sure means of escape, although it is rarely an easy way out. Let's return to Moses 7:18. If the people of Enoch are to be our role models for how we should work to carry out the effects of the Atonement in society, we find in this verse a description of what we should be doing.

There were four characteristics of their Zion society. They were of "one heart"

and “one mind,” qualities that underscore the process of at-one-ment at work. I am not exactly certain what these traits mean. They are susceptible to many interpretations. So, too, with the third trait, that they “dwelt in righteousness.” But as to the fourth trait, I think the mark is clear: “There was no poor among them.” To be sure, poverty can occur at many levels.<sup>21</sup> But I think there is no question that in addition to a poverty of love, the Lord is concerned about a poverty of means. One of the most consistent themes of the revelation the Lord gave to the Prophet in the founding days of the Restoration is the message that we are to “look to the poor and the needy, and administer to their relief that they shall not suffer.”<sup>22</sup> We are to get involved in community building. We extend the effects of the Atonement to their farthest reaches by creating a society that has as its goal helping those who have been left behind.

As President Kimball taught us so pointedly, we live in a culture that is saturated by the unhealthy pursuit to acquire wealth for excessive consumption. I recognize that lawyers are at the forefront of that charge. They are always a step or two behind the investment bankers and the entrepreneurs, but, nevertheless, they are there, comrades-in-arms. Let me make clear, so that I am not misunderstood, there is nothing wrong, indeed there is much good, about the creation of wealth. The issue is the purpose for which the wealth is sought and the ends to which acquired wealth is put.

Remember the counsel of Jacob, the brother of Nephi, in the Book of Mormon: “Think of your brethren like unto yourselves, and be familiar with all and free with your substance, that they may be rich like unto you. But before ye seek for riches, seek ye for the kingdom of God. And after ye have obtained a hope in Christ ye shall obtain riches, if ye seek them.”<sup>23</sup> Now that is a great promise. The Lord promises us the very material wealth we spend so much of our lives pursuing. But, as you might have guessed, there is a catch, and, upon closer examination of what Jacob said, it is a significant condition. This promise is only to those who seek riches (and I am using the C.S.

Lewis view that riches includes wealth, power, and popularity) “for the intent to do good.” But what does that mean? Isn’t “doing good” so vague that it allows too much room to maneuver? I think Jacob must have been a very good lawyer, because in the very next phrase he closed that loophole by defining what the Lord means by “doing good” with riches: “to clothe the naked, and to feed the hungry, and to liberate the captive, and administer relief to the sick and the afflicted.”

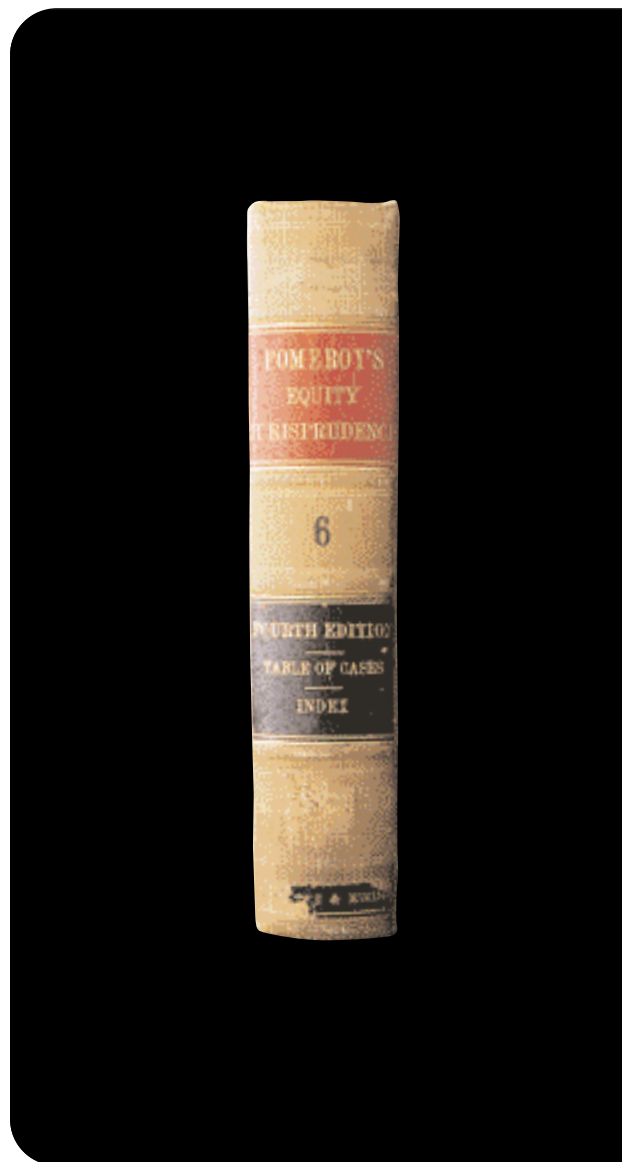
Are those our goals as a people? Are those your goals in pursuing your vocation? They must be. Our participation in society, something we are called to do by our understanding of the Savior’s love for all humankind, must have as its primary purpose this definition of doing good.

In conclusion, allow me to share with you the words that inspired me to become a lawyer. They come from my boyhood hero, Robert F. Kennedy. As I read them to you today, they remind me of how far short of the mark I have fallen in my discipleship as a lawyer, but I hope they remain a lodestar.

[The GOP] counts air pollution and cigarette advertising, and ambulances to clear our highways of carnage. It counts special locks for our doors and the jails for those who break them. . . . Yet the gross national product does not allow for the health of our children or the joy of their play. It does not include the beauty of our poetry or the strength of our marriages, the intelligence of our public debate or the integrity of our public officials. It measures neither our wit nor our courage, neither our wisdom nor our learning, neither our compassion nor our devotion to our country; it measures everything, in short, except that which makes life worthwhile. And it can tell us everything about America except why we are proud that we are Americans.<sup>24</sup>

There is discrimination in New York, apartheid in South Africa, and serfdom in the mountains of Peru. People starve in the streets of India; intellectuals go to jail in Russia; thousands are slaughtered in Indonesia; wealth is lavished on armaments everywhere. These are differing evils, but they are the common works of man. They

reflect the imperfection of human justice, the inadequacy of human compassion, the defectiveness of our sensibility towards the sufferings of our fellows; they mark the limit of our ability to use knowledge for the well-being of others. And, therefore, they call upon common qualities of conscience and indignation,



a shared determination to wipe away the unnecessary sufferings of our fellow human beings at home and around the world.<sup>25</sup>

[Let no one be discouraged by] the belief there is nothing one man or one woman can do against the enormous array of the world’s ills—against misery and ignorance, injustice and violence. . . . Few will have the greatness to bend history itself; but each of us can work to change a small portion of events,

and in the total of all those acts will be written the history of this generation. It is from numberless diverse acts of courage and belief that human history is shaped. Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends a tiny ripple of hope, and cross-



ing each other from a million different centers of energy and daring, those ripples build a current which can sweep down the mightiest walls of oppression and resistance.<sup>26</sup>

The reason we must get involved in our society is to help those who have been left out or behind. We have a robust debate about the best way to do that. As a political conservative, I am certain that I would strongly disagree with my boyhood

hero's views about how to get there. But I believe that the aim must be the same.

When the boy Joseph Smith went into the grove of trees "on the morning of [that] beautiful, clear day, early in the spring of eighteen hundred and twenty," he was driven there by two related purposes. The first, which he stressed in his earliest known account of the First Vision, was to repair his relationship with God, a relationship that had been strained by the withering effects of sin. The second purpose, featured more prominently in the 1838 account of the First Vision canonized in our scripture, involved community building: which church should he join?

Those two questions are intertwined and inseparable. Our discipleship must involve both. How do we become at one with God? How do we become at one with our fellow travelers? The answer to both is the same, even and especially for lawyers: by participating in the atoning sacrifice of our Lord and Savior Jesus Christ and making that ongoing act of mercy and grace the foundation for all we do.

I bear you my witness that the Savior lives, that He stands at the head of His Church today, and I encourage all of us to give our best efforts to the work of extending the effects of His Atonement throughout our society.

I say these things in the name of our advocate with the Father, the Lord Jesus Christ. Amen.

#### NOTES

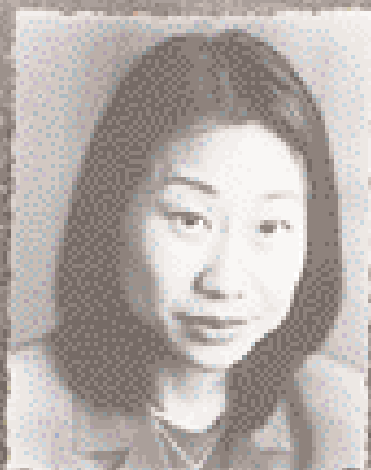
- 1 Doctrine and Covenants 93:36.
- 2 Jacob Neusner, *The Glory of God Is Intelligence: Four Lectures on the Role of Intellect in Judaism* 2, 7 (1978).
- 3 Christopher Buckley, *Let's Keep the Pol in Politics*, New York Times, February 4, 1997, at A23.
- 4 Moses 7:17–19.
- 5 See Acts 2:42–47 (NRSV) ("They devoted themselves to the apostles' teaching and fellowship, to the breaking of bread and the prayers. Awe came upon everyone, because many wonders and signs were being done by the apostles. All who believed were together and had all things in common; they would sell their possessions and goods and distribute the proceeds to all, as any had need. Day by day, as they spent much time together in the temple, they broke bread at home and ate their food with glad and generous hearts, praising God and having the goodwill of all people.").
- 6 See 4 Nephi 1:3, 15–17 ("And they had all things common among them; therefore there were not rich and

poor, bond and free, but they were all made free, and partakers of the heavenly gift. . . . And it came to pass that there was no contention in the land, because of the love of God which did dwell in the hearts of the people. And there were no envyings, nor strifes, nor tumults, nor whoredoms, nor lyings, nor murders, nor any manner of lasciviousness; and surely there could not be a happier people among all the people who had been created by the hand of God. . . . [T]hey were in one, the children of Christ, and heirs to the kingdom of God.").

- 7 Moses 7:18.
- 8 Declaration of Independence, pars. 2, 3.
- 9 Doctrine and Covenants 18:10–11.
- 10 John 3:16.
- 11 Doctrine and Covenants 19:16–19.
- 12 See Eugene England, *The Quality of Mercy* 52 (1992).
- 13 C. S. Lewis, *The Weight of Glory and Other Addresses* 18, 19 (1980).
- 14 Robert Bolt, *A Man for All Seasons* 5 (1962).
- 15 *Id.* at 90, 91.
- 16 *Id.* at 91, 92.
- 17 Matthew 19: 23–26 (NIV).
- 18 C. S. Lewis, *God in the Dock: Essays on Theology and Ethics* 51, 52 (1997).
- 19 See Neal A. Maxwell, C. S. Lewis: *Insights on Discipleship* 8, 9 ("I have chosen to talk about the insights and contributions of C. S. Lewis concerning how exacting Christian discipleship really is. . . . [W]hile it is not doctrine for which I look to Lewis, I find his *depiction* of discipleship especially articulate and helpful. The yield from Lewis in this respect is abundant.") in C. S. Lewis, *The Man and His Message* (Andrew C. Skinner et al. eds., 1999).
- 20 Spencer W. Kimball, *The False Gods We Worship*, Ensign, July 1976.
- 21 Mother Teresa, she who gave her life in service to "the poorest of the poor," reminds us: "Where is that hunger? There is a hunger for love. We must have the courage to recognize the poor you may have right in your own families. Find them, love them, put your love for them in a living action. For in loving them, you are loving God Himself." In *Mother Teresa: A Film by Ann and Jeanette Petrie* (1986).
- 22 Doctrine and Covenants 38:35.
- 23 Jacob 2:17–19.
- 24 *Recapturing America's Moral Vision* (March 18, 1969, Kansas State University) in *Make Gentle the Life of This World: The Vision of Robert F. Kennedy* 21 (Maxwell Taylor Kennedy, ed., 1998).
- 25 *Day of Affirmation Address* (June 6, 1966, University of Capetown) in William J. vanden Heuvel, *On His Own* 156 (1972).
- 26 Arthur M. Schlesinger, Jr., *Robert F. Kennedy and His Times* 745–56 (1978).

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PHOTOGRAPHY BY BRADLEY SLADE

BY DAVID BARGATZE

# ~~Where the Rubber~~ Meets the Road

When working on a performance car, a mechanic will often modify the engine to increase power, but without a quality set of tires to put that power to the pavement, such enhancements can result in impressive tire smoking and squealing,

but not much real improvement in speed or acceleration. The transformation of potential into performance can only be accomplished "where the rubber meets the road."

## So it is with law school.

Some of the best counsel that law students can receive is that if they are not careful, they will graduate from law school and not know enough about being a lawyer. Class work often provides vital schooling in the theory of the law but precious little practical education in applying the law. The result is often enlightening, but not always applicable, with law students doing much “smoking and squealing,” but not always possessing the ability to put the theoretical horsepower to the practical pavement.

As part of a comprehensive Law School effort to provide first-year students with tools and opportunities to apply knowledge to real problems, Law School Career Services offers the Private Sector Externship (PSE) Program. “Combined with the Rex E. Lee Advocacy Program, the PSE [program] provides sound, practical training and experience to our students,” says Kathy Pullins, associate dean of Alumni and Student Relations.

“Employers expect law schools to provide exceptional training to students in legal writing and research, because, gener-

ally speaking, current undergraduate education does not offer such a background,” Dean Pullins notes. “Also,” she adds, “new associates are expected to contribute much sooner to justify increasing salaries. The J. Reuben Clark Law School has recognized these changes, and the PSE is an innovative way to bridge this gap.”

In 1998 a task force of practicing attorneys and Law School faculty and staff founded the PSE Program to give first-year law students hands-on experience in law firms and corporate legal departments. This externship program is attractive to students, who find that since the early 1990s, paid law-related summer work is increasingly challenging to find for first-year students unless they have personal connections.

“The Law School Career Services Office does this vital legwork of finding employers willing to provide legal experience to first-year students,” says externship director Jim Backman. Offering four units of law school credit in lieu of pay for 200 hours of work, the PSE Program provides access to unique summer experiences that would otherwise be unavailable. Close inspection of private law practice is possible as employers mentor students by providing legal work and feedback. Students have a chance to observe depositions, court appearances, client meetings, and negotiation and settlement sessions.

The application and evaluation process that matches students with employers is based on résumés and a formula that ranks mutual interest rather than GPA and class standing. The premise is that the school’s Advocacy Program prepares all first-year students for summer clerk work, irrespective of grades. First-year students do not use electronic research during fall semester, insuring that they have a solid foundation in traditional research methods. That research is used to produce legal documents under strict time constraints—the Advocacy Program has an assignment due nearly every week.

Monte Stewart, director of the Rex E. Lee Advocacy Program, explains, “On the first day of school, the Advocacy [Program] faculty makes the following promise to their students: ‘Successful completion of [the Rex E. Lee Advocacy Program] will

qualify you to work in an externship or clerkship during the following summer without additional training.' Feedback from the students and the employers at the end of that summer consistently attests to a promise kept."

In addition to acquiring transferable skills that will make them good candidates in future employment interviews, the PSE Program gives students a close mentoring relationship. Alex Kennedy, a 1999 extern, notes that his Jacksonville, Florida, "private externship at LeBoeuf [Lamb Greene & MacRae] led to good friendships with LeBoeuf attorneys." He believes the program "gives students the opportunity to work in some of the best law firms and companies in the country, [where] externs gain excellent experience from knowledgeable and successful practitioners."

Dan Diepholz, another 1999 extern, agrees: "My experience at Chevron provided me with insights that went beyond what I would have gained with a paid position. Aside from challenging work assignments, I was given an opportunity to be mentored by a senior attorney and the general counsel of a Fortune 500 oil company. Those are relationships that usually take much longer than five weeks to establish."

Employers also like the program. The 83 employers who participated during the summer of 2000 did so for a variety of reasons. Most were motivated by the desire to mentor a fledgling law student, the way some attorney had mentored them. Corporate counsel participated in order to provide students with unique opportunities to experience in-house counsel environments early in their legal education.

The feedback confirms that benefits are two-way. As 1999 extern Tom Checketts summarizes:

*Not only was I given the opportunity to be exposed to many areas of the law and receive mentoring from very competent practitioners, I also received credit. In return, the firm was able to use me on projects that assisted their clients in beneficial ways. Another advantage to the firm is that, since I am intimately aware of their areas of expertise, I will be sending them referrals. I've already done this.*

The program has strong advocates in the Law School Career Services Office. "If students feel success and enjoy their externships, they will continue to explore private sector career options," says Beth Hansen, assistant director of Law School Career Services. "As with all work experience, positive or negative, externships help students make decisions about the career paths they will pursue. Our private externship program is particularly important for students who want legal experience in a foreign law office, since foreign positions are difficult for students to arrange on their own."

During the summer of 2000, Bill Atkin, associate general counsel for The Church of Jesus Christ of Latter-day Saints, made certain that students had plenty of opportunities for experiencing international law. He arranged externship positions in Germany, South Africa, Argentina, Australia, and Mexico. In addition to the opportunities with Church offices, international experiences were available in 11 other countries on six continents. These foreign externships give students a chance to broaden their legal training while expanding their language and cultural experiences. Between 25 and 30 students will venture to international sites for 2001 summer externships.

Domestic externships were available in 19 states and the District of Columbia last summer. There were six externship positions in Washington, D.C., and 16 in California, two very popular areas with students. Since only seven positions were open in Utah, the program encourages exploration of cities outside the state.

The five-week term arranged through the Private Sector Externship Program allows a great deal of flexibility and time for first-year students to gain valuable legal experience.

Public sector externships are also popular, giving students a chance to work for judges, legal services offices, and government agencies. Some students do both a public and a private sector externship their first summer. Others do a private sector externship, then work a paying job the rest of the summer. The following stories describe how this program has played out in individual students' lives.



**BECAUSE OF HIS  
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WRITING AND  
RESEARCH COURSE,  
ADAM COULD TAKE  
A PROJECT, FIND  
THE LAW, AND PUT  
TOGETHER A MEMO  
FOR AN ATTORNEY.**



#### **Adam Caldwell (1999)**

Having worked in the hotel industry to finance his college education, Adam Caldwell was delighted to extern for Marriott's legal department in Washington, D.C. He hoped to see the legal side of problems he witnessed in his prior work experience or at least to see "how such problems occurred, starting at the lowest-level hotel employee."

Adam says his first-year legal writing and research course best prepared him for his externship. Because of the class, he could take a research project, find the law, and put together a memo for an attorney. He found that, although his research and writing skills weren't as polished as those of second- or third-year law students, the fact that he wasn't being paid and didn't have to focus on cost efficiency allowed him extra time for research and editing. Adam believes externs provide help to get "back burner" projects finished and are an extra pair of hands to help with rush projects. He also points out he was able to work well with office staff and paralegals, thus increasing their efficiency.

Although Adam did not enter law school intending to work for a large corporation, he enjoyed the summer experience and believes it helped him narrow his areas of interest. He states, "I still want to work for a small enough firm that we all know each other, yet big enough that I have good resources to draw from."

Adam believes he and Dan Diepholz, another BYU extern at Marriott, had experiences not available to many first-year law students. The externship gave them "an excellent understanding . . . about how the best and the brightest lawyers in corporations work with each other day in and day out, their environment, and what sort of issues they face."

#### **Sara Dansie Jones (1999)**

Sara Jones was excited to spend eight weeks at Kim & Chang in South Korea. "It was a great opportunity to go back to my roots. I was born in Korea and hadn't been back since I was a baby," she explains.

Adopted by a family in Utah when she was two years old, Sara grew up in Sandy, Utah, not speaking Korean. As she embarked on the externship, she was concerned that her coworkers would think less of her because she was Korean but couldn't speak the language. "I finally learned that it didn't matter," she says. "I just needed to work hard and do my best."

One of her most important discoveries was the realization that "the pressure of law practice is the same everywhere, even though I learned a lot about the Korean legal system, which is not the same as American law." One of the second-year moot court finalists last year, Sara notes that Korea lacks "the adversarial system that we have here." Rather than preparing



for oral arguments, “you write the briefs and submit them,” she says.

Sara, a chemical engineering major, feels lucky to have worked in Kim & Chang’s intellectual property section doing “soft IP” nonpatent work. The experience, she says, gave her a definite advantage: it confirmed her interest in intellectual property and has been a stepping-stone in pursuing other IP opportunities.

There are many reasons for having BYU externs, Sara says. “If employers never bring in a BYU student, they won’t know how hardworking we are. I had so many comments about what a hard worker I was; everyone thought I was an over-achiever. I thought, ‘No, I’m around people like this all the time at BYU.’ The BYU work ethic is very compatible with the Korean work ethic.”

#### **Larry Shaw (1999)**

Larry Shaw spent the summer of 1999 at Phelps Dodge Corporation in Phoenix working with mentor David Colton. He observes, “Before applying to Phelps Dodge, I researched the copper industry and realized how big it is in the United States. That really got me excited about an externship. I’m interested in corporate law, so it was great to see the different aspects of the company and how the attorneys at the corporate level work together.”

Before starting law school, Larry earned a master’s degree in industrial

hygiene and worked three years for OSHA, where he gained on-the-job expertise. When Dave Colton invited him to a Phelps Dodge staff meeting where the safety director was speaking, Larry’s comments piqued the director’s interest. When the director learned about Larry’s OSHA experience and that he spoke Spanish, he took him to Mexico to help with a compliance inspection. Larry, formerly an OSHA inspections officer, says that doing an audit at a plant in Mexico or South America was on his “wish list of things to do before I die.” He also enjoyed the proximity to the Mexican border. “I’m Hispanic, and living in Phoenix allowed me to go down to Mexico any weekend I had free,” he relates.

Although externships are not paid, Larry viewed his as a great investment. He took a long-term approach: he believed this five-week experience would help him in his job search the next summer. As an unexpected bonus following his externship, Larry was invited to stay on as a paid clerk for the balance of the summer. He returned to Phelps Dodge during the 2000 summer, employed in its safety and industrial hygiene office.

Larry especially appreciated the mentoring and the networking in his externship. “One of the things that’s most difficult for students is to begin networking,” he notes. “It’s something they may have not done before. Through the externship program I was able to work with Dave Colton and get to know him. Ten years down the road, I will still be thanking him for helping me get started. I’ll want to do the same thing for someone else.”

“Most important,” Larry says, “the experience helped me get a good idea of what I want to do with the rest of my career.” When he graduates, he wants to be involved in corporate compliance work for a major company doing OSHA, EPA, or environmental health compliance, the same kind of work he has done the past two summers.

#### **Bill Sawkiw (2000)**

Bill Sawkiw’s only regret about his externship with Wilkinson Barker Knauer, in Washington, D.C., was that it wasn’t longer. “When externs first arrive,

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PLACED IN HIM BY HIS  
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there may be some reluctance to give them work, because they are first-year law students,” he says. By the time he hit his stride, the time was half over.

That doesn’t mean that Bill was just given busywork. On the contrary, he felt like part of the team. He says, “Although some of the work assignments may have been small, they seemed necessary to the end result we wanted to accomplish.” While not all assignments are glamorous, he felt many were, indeed, just that for a first-year law student. He was able to do a lot that made him feel like an important cog in the wheel. Bill credits the people at WBK with helping him have a positive experience. “Everyone was very supportive and helpful.”

Like many others who lack personal connections in the legal profession, Bill was not certain what kind of legal experience he would be able to get during his first summer. An externship “seemed like a way to have a great experience that you might not be able to get through traditional channels,” he recounts. “I was also intrigued by the possibility of getting credit. Law school is difficult, and when you can get additional credit to take some pressure off your semester course-load, it helps.”

**Jace Locke (2000)**

Being treated like one of the second-year law clerks was a pleasant surprise to

Jace Locke, who externed at LeBoeuf Lamb Greene & MacRae in Jacksonville, Florida. “All of the attorneys treated me like a summer associate, and, in fact, I believe a number of them didn’t even realize I was working for credit, instead of pay,” he says. The confidence placed in him by his mentors and other attorneys was apparent from the work Jace was asked to do. He relates:

*When I first arrived at the office, I met with an attorney in the labor department, and she asked me to write a motion to dismiss for failure to state a cause of action. I was given a background explanation of the case and the files on the case, and I was asked to meet back with the attorney in three days. I worked with this attorney for about two weeks, receiving plenty of valuable feedback and instruction. What was great about this project is that I ended up writing the entire motion (about six pages), and after proofing my work, the attorney signed the motion, and we submitted it to the court. The process of writing and submitting the motion was a great confidence booster for me, and the supervising attorney was genuinely impressed by and appreciative of my help.*

Jace appreciated that he was handed meaningful work to do. Regarding a tax research assignment, he says, “The work was rewarding because it was important. As I was the only person researching a



specific technicality of the tax code, the job I performed did matter.”

Perhaps the best aspect of the experience was the interaction with the attorneys, he says. “I was impressed with the friendliness and accessibility of the attorneys at LeBoeuf. By the end of the externship, I realized I was being treated as a valued co-worker, not just as an extern.”

#### **Jaimee Macanas (2000)**

Many students would hesitate to accept an externship in a country plagued by poverty, crime, and corruption, but Jaimee Macanas found her five weeks with the LDS Church Legal Office in Johannesburg, South Africa, thrilling because there was so much work to be done.

This Johannesburg office handles all of the LDS Church’s legal matters for Sub-Saharan Africa, so Jaimee handled issues ranging from car accidents and property disputes to immigration and litigation concerns. As a result of the Church’s humanitarian focus, one of Jaimee’s assignments was “researching various health laws in different African countries to determine the legal process and methods of importing medicines into the countries.”

The five-week externship term allowed Jaimee to spend time traveling through Africa following her externship experience. As she traveled by road from Uganda to South Africa, she noted, “There are many charities, ngos (nongovernmental

organizations), and international firms that would love an extern to help research laws in various countries to insure they are working within the law.”

The practice of law was only part of the experience that Jaimee gained in Africa. Perhaps even more important was the experience of living and working in such a different environment. She reviews her impression:

*Evidence of the scars of apartheid is clear; many people are frustrated and uneasy, and as a result, car-jackings and kidnappings are routine. Yet I loved South Africa and Africa in general—the diversity, culture, and instability were all so intriguing. Africa is unpredictable; anything could happen in a day. Coups pop up, civil war breaks out, poverty, crime, corruption, and suffering are everywhere. Yet there is such an amazing pull to be there because of it. There’s a lot of work to be done, and there’s so much untouched potential.*

#### **Matt Kennington (2000)**

Despite spending more than four weeks as an extern at Kutak Rock’s Denver office and another five and a half weeks as a paid clerk, Matt Kennington claims, “Other than the method of compensation, I still don’t understand the difference between externs and clerks.” Counting it all a great summer experience, Matt worked with the health-care

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group interviewing witnesses, researching a variety of issues, and helping to write briefs, including one for the Colorado Court of Appeals.

“Throughout my stay with Kutak Rock, I was included in meetings and discussions and even had the chance to interview witnesses,” he says. “They valued my opinions on whether or not to put certain witnesses on the stand and used my witness interview notes in trial preparation. That kind of confidence in my work was astonishing to me, and it made me want to earn their respect.”

One reason for Matt’s surprise was that the office had never worked with a first-year law student before. He recalls,

*I had a chance to overhear some of the other summer clerks talk about their projects and problems, and I came away with the sense that I had been prepared well for this kind of work, particularly by my first-year advocacy class. One day I asked an attorney why he was placing so much confidence in me and giving me work that even the second-year-student clerks weren’t getting. He said, “Most law firms don’t hire first-year [summer] associates, but most law students don’t have the life experience BYU students have.”*

Matt says that “a real key to making the externship valuable, both to the employer and to the student, is a supervisor who can strike a balance between entrusting the student with meaningful work and providing enough supervision to ensure success.” He grants that the balance differs from student to student, but the responsibility for striking that balance lies as much with the student as with the supervisor. “Students should know what their limitations are and ask for the help they need,” he states.

The attorneys with whom Matt worked discussed with him the possibility of returning to Kutak Rock. If that happens, he says, “the decision will have a lot to do with the relationships I formed there and the admiration I have for those attorneys.”

#### **Sarah Chow (2000)**

Sarah Chow’s interest in intellectual property took her to Arent, Fox, Kitner,



Plotkin & Kahn in Washington, D.C., but the work was truly global. “One project involved the transfer of Cocos Keeling Islands and Tonga domain names,” she says. “I researched the process of transferring the domain names and contacted the registrant to explain to him the transfer process.”

From the start, Sarah’s externship involved international issues. “The very first project I worked on involved researching civil procedure issues and writing an office memo,” she relates. “Luckily, I had a copy of the office memo that I had written for advocacy on disk and was able to reference it for format. The civil procedure issues involved service of process in a foreign country and personal jurisdiction. I was happy to know that the information we learned in civil procedure this past year was applicable in real life.”

The five-week program allowed Sarah to split her summer between two cities that interested her. The firms that offered her a summer position all have policies against split summers; however, she says, “When I explained the externship program to the firms and the experience I would be having at Arent Fox, the firms were willing to allow me to spend the first five weeks in Washington, D.C.”

Sarah adds, “Another advantage of the PSE Program is that I was able to create my own learning plan and work on pro-

jects of interest to me. Usually summer associates do not have as much freedom to choose the types of projects they want to work on. Over the five-week period that I spent at Arent Fox, my mentor made sure that I was able to work on every type of project that I had included on my learning plan. I left Arent Fox with an even greater interest in trademark law.”

### **Tanya Milligan (2000)**

Tanya Milligan considers herself fortunate to have spent an externship with Holme, Roberts & Owen in her home town of Denver. The opportunity, she says, “served the double purpose of giving me contacts in Denver as well as allowing me to live at home and save on expenses while I worked for credit.”

The externship started slowly, with Tanya and her mentor unsure of what kinds of assignments she could handle. This uncertainty was due to the fact that Tanya was doing bankruptcy work, a subject with which she was not familiar.

To make sure that she got a grasp on the practice area and was a benefit to the firm, Tanya developed a “system of discovery” to use for the first weeks of her externship. She explains,

*I would write down the key words that Duncan said to me, then go to Susan, our paralegal, for a first take on what I should be doing. I would then make a first effort and*

*take my work product and more questions to Elizabeth, one of the associates. She would usually correct my misconceptions and fill in the gaps. By the time I got around to Duncan again, I usually had a pretty good draft, or at least some intelligent questions. . . . After just a few weeks, I could throw around “adversary proceeding,” “proofs of claim,” and “substantive consolidation” without sounding foolish.*

The bankruptcy group with which Tanya worked was involved in a large, complicated case scheduled for trial at the end of the summer that required a lot of work to be done. “Early in my fourth week,” she says, “Duncan called me into his office and asked me what my plans were for the rest of the summer. He offered me a job to stay on at HRO as a summer intern and help out in preparation for the trial, which I promptly accepted.”

“I could not have planned a more advantageous summer after my first year of law school. I’ve been able to get a feel for the large-firm experience, what it is like to work in downtown Denver, as well as talk to and get to know lawyers in many different fields of law,” Tanya conveys. “Unless you know the hiring partner of some firm, there is no better way of getting great summer experience than an externship.”

*David Bargatz is a 2001 graduate of the J. Reuben Clark Law School. His 1973 Mustang rides on Goodyear touring tires.*

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PSE task force members included practicing attorneys Ralph Mabey, David Colton, Dix Newell, David Golden, and Bill Atkin and Law School faculty/administrators Jim Backman, Scott Cameron, Stan Neeleman, David Thomas, Mary Hoagland, and Vicki Huebner. Faculty members Steve Averett and Susan Griffith; law students Rod Andreason, Bryan Farris, and Lii Mossman; the Law School Career Services staff; and many wonderful practitioners were all instrumental in making the first year a success.



**BY TESSA M. SANTIAGO**

# Duty To RESCUE



**THE CASE OF  
THE GOOD-ENOUGH  
SAMARITAN**

**ILLUSTRATIONS BY GARY KELLEY**



**I** don't know if you've ever noticed this particular man. He lives among us. Moves around Provo with his sleeping bag, two carry-ons, his stereo, and a pillow. His favorite spot right now is the bus bench just south of the MTC. He likes bus benches. I've seen him sitting on them day after day waiting for the bus that never comes. He sat all through the summer and through last winter and the winter before that. That's when I met him.

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Two winters ago I looked up from ordering a plate of teriyaki chicken at Teriyaki Bowl and saw him sitting on the bus bench outside Hogi Yogi. It's 32 degrees outside, and this man's sitting quietly like he's listening to prelude music only he can hear. I watched him through the window while I ate. He didn't move during my entire meal. Just sat, almost daintily, with his feet crossed and his arms protecting his life next to him on the bench.

I went outside and asked him whether he had eaten. Could I buy dinner for him? "No, thank you. I've eaten. And I have these if I get hungry." He held up a bag of fruit.

My family and I got into the car and drove up the street. Then I made my husband flip a U-turn in Winchell's parking lot. "Do you have anywhere to stay tonight?" "Not yet." "I can't take you home with us, because our house is too small, but I can get you a hotel room." "Thank you. Motel 6 in East Bay is where I prefer to stay."

So I climbed into the backseat with the kids. He took the front with his belongings. When he signed the motel register, I couldn't help but notice he had the most beautiful handwriting—an almost elegant paradox coming from the hand of somebody who spends his days waiting for UTA.

His name is Anthony or Andrew or Michael, I recall—something of the Episcopalian saint variety. I think he's from Atlanta or somewhere in Georgia. When he lost his job about four years ago, he gath-

ered his things together and started traveling. He likes Provo. The people are friendly. The police don't bother him too much.

As Anthony/Andrew/Michael left to find his room at the motel, the manager turned to me. "Do you mind if I ask you a question?" "No." "Where did you find him?" "Just sitting out in the freezing cold on a bus bench." "You know, you're not the first person to bring him here. He's had people book him into the hotel for a week before. He's really just using you guys." "I figured that. He knew exactly where he wanted to stay. As long as he's warm. Nobody should have to sleep outside in cold like this."

That was two years ago—long ago enough that I can't quite remember his name, not so long ago that I no longer recognize him. When I drive by the MTC and see him sitting quietly in the winter afternoon sun, I cannot help wondering, "Was that all I had to do? Just \$71.68 of mercy on the Discover Card and my duty to Provo's homeless is done?" His very presence on that bench unnerves me. I want to turn my head, to pass by on the other side. You see, I don't quite know if that was enough. I have the sense I am still that brother's keeper.



The discussion was particularly heated the day Ms. Augustine-Adams brought in the casino case. The facts were brutal: Two

young men from California went to visit the casinos in Reno. On some strange, sadistic whim, one of the young men, Jeremy Strohmeyer, abducted a seven-year-old girl outside the casino. He took her into the men's bathroom, locked the two of them in a stall, and proceeded. The other young man, the friend, walked into the middle of a nightmare, as far as he could tell from the sounds coming from the other side of the closed stall. He must have stood there for a moment—the record's not really clear. Then he walked out of the bathroom as quietly as he had entered. He told no one, not a soul. He didn't raise the alarm, didn't rush to the security guard, didn't break down the door to rescue that poor little girl, didn't even tell the police when Strohmeyer confided in him what he had done. He just walked on by.

They tried to find some charge to hang the friend on. Not manslaughter, not murder: he took no physical part of the action. Not depraved indifference to human life: he didn't do anything criminal. Not assault: he didn't threaten to harm the poor girl, didn't even have an intent to harm her. Not an accomplice: he didn't know what the other guy was planning. Not even negligence: he had no duty that he could breach. "But, but, but . . .," we all stammered. "Surely he had to do something once he heard and knew what was happening." "Didn't have to," says the Nevada law. "Didn't have to do a darn thing."

The legal concept's a difficult one to stomach. It's called "duty to rescue." It should really be called "no duty to rescue." Essentially, the law says: If you had no part in creating the circumstances in which people needing to be rescued find themselves, you have no duty to rescue them. So, if you see a woman in the middle of a rainstorm stranded on I-15 with three children in her car, drive on by. If you see a man caught in the middle of a raging torrent, obviously going to drown, stay right there on the bank. You could even wave as he drifts away. If you walk into a bathroom and hear your friend doing unthinkable acts in a stall, walk out. The law is on your side.

However, if you choose to intervene or to attempt a rescue, you have a duty to continue that rescue until your life is

threatened. Then you can pull out, and nobody will hold you liable. In fact, you can pull out at any time, as long as you don't leave the person in a worse position than the one you found him in. So, say you jump into that raging torrent to save that man. After battling to get to him, you hold him up and strike for the shore. You fight uprooted trees, swirling currents, and floating cats, and 10 feet from the shore you can't hold on any longer. It's either you or him. In an agonizing decision you see your family, your husband, your children, the mortgage on the house, and your very small insurance policy, and you let the man go. He drowns a little while later. No one in his right mind or heart would find you liable for the man's death. Certainly not the law.

Say you jump into that river to save the same drowning man. You battle out to him, fighting uprooted trees, swirling currents, and floating cows. You grab hold of his collar and strike for shore. Just then you remember, "Hey, the Niners' game is on in a couple of minutes!" You couldn't possibly effect the rescue and be home in time for the kickoff. So you let go of the collar, swim for shore, load up the fishing gear, and head for home. You make the kickoff. The man drowns five minutes into the first quarter. Are you liable for his death? No. He would have drowned anyway. What's the harm in a little false hope?

What actual, quantifiable harm did the friend do to the little girl who heard the door swing open and thought she was about to be saved? What harm more than the harm she already was suffering did the friend inflict on her little soul? Not enough harm to hold him liable, says the American law. Our friend had no duty toward this girl, nothing that could bind him to act toward her in a certain way. Therefore, in the quintessential equation of tort law, if there is no duty to act, then whatever harm comes about cannot be attributed to our friend's failure to do his duty. Thus there is no liability (the civil law's term for guilt). My mind raced to find a duty I could pin on that friend: a special relationship like that of a doctor/patient or a teacher/student or guardianship, because she was so young. I couldn't find one. He didn't even know her. She was a stranger to him. He didn't have to take her in.



When I was 12 years old, I learned the meaning of despair. It was the Christmas holidays—a six-week stretch of summer days we filled with beaches, movies, and selecting two-dollar Christmas gifts for the nine members of my family. The closest shopping center was two suburbs away, about two miles along Main Road in Claremont. We walked there and back. It took about half an hour at a brisk pace, weaving in and out of the oak trees planted in a soldierly row along the sidewalk.

One afternoon I set off for home from Claremont. I'm not sure why I was alone. Normally Kim was with me wherever I went. But no matter. I actually enjoyed walking alone. I conjured up the lives of the people who lived in the houses I walked by. I wondered who put up the shawl in the window, who drank all the beer in the bottles piled outside a gate, and why in the world anybody would own a Pekingese.

The walk that day took me over the bridge and past Newlands Cricket Club, where I caught a glimpse of the wicket as I went by the turnstile. Suddenly, just as I started running my hands against the bars of the wrought-iron fence that encircled Kelvin Country Club, I stopped dead in my tracks. I couldn't move. I felt like somebody had tied my insides to a stick and was slowly turning them—like I had seen Indian dyers doing to sheets of cotton streaked with indigo—twisting, turning, wrapping my intestines round and round until it was all I could do to breathe. I sank to the ground, leaning against and gripping the bars with my hands and squatting there under the trees. (I would later become familiar with, although not in the least accustomed to, menstrual cramps, but this was my first severe attack. Perhaps my young body couldn't quite figure out the genteel way to slough the womb. After all, it was only my fifth or sixth time.)

Hindsight was scant comfort to me as I crouched there and waited for the pain to pass. It didn't. I made myself walk 10 steps. I crossed the road, reached the traffic island, and sank to the ground. I started to

pray, to plead, to beg anybody who would listen or could hear—my mother, who I knew was at home; the people driving by in the street not 20 feet away; or God, who could pluck me up and transport me home if He really wanted to. I'm not sure what I looked like to the people driving by in those cars. Did they see the curly-headed young girl, fists doubled into her abdomen, rocking as she lay curled on the grass in the middle of a traffic island?

I must not have looked desperate enough. Nobody stopped. I must not have sounded desperate enough either. My mother never came. She didn't hear my cries, as I was certain she would. Every moment of those two hours it took me to creep my way home, I expected the red-and-white VW bus to pull up to the curb and my mother to rush out, saying, "My darling, I heard you. I knew you needed me. I'm here." Even God didn't seem to see me, bent over double, hanging on to fences and walls as I tried so very hard not to cry out loud. All I wanted was the pain to subside so that I could run home. That didn't seem so very much to ask.

I have often wondered why I had to crawl home when I was 12. Why couldn't God have made the pain subside? Why couldn't my mother have heard my urgent pleas sent on those otherworldly mind waves I thought existed between mother and child? Why couldn't somebody have stopped and taken me home? Was the sight of a young girl doubled over on the grass in the middle of a traffic island so common a sight that they thought nothing of it? Or were they so intent on going and getting that they didn't notice me?

I have a mother-in-law with a gift for noticing. I don't believe she has ever passed by on the other side. Ella always knows "a dear, little family" who needs or a "sweet young couple" who have nothing or one of her many "young friends" who have been parented by people with no interest in the vocation. Her garage is the cosmic opposite of a black hole. Furniture, clothing, and

last-minute birthday and baby-shower gifts pour out of the double doors and take up lodging elsewhere. The supply never seems to diminish. Her neighbors know she knows. They come to her with bagsful of clothes, pickups full of furniture. "Where do you find these people?" they ask my mother-in-law. Ella just smiles and makes up a sweet reply that won't hurt their feelings. Later she will take their food and their furniture to her dear little families and to her poor young friends who live only about a mile away on the other side of town.



I don't think Ella's neighbors are cruel or unkind. I know them. They're generous, compassionate, kind people who live very busy lives and who, if you asked, would drop what they were doing to help you. But if you didn't ask, if you were just hungry, needy, naked, sick, or afflicted, they wouldn't know where to find you.

I, on the other hand, was lying in the middle of a traffic island. That's about the equivalent of sitting in the middle of the traffic circle at the entrance to uvsc, or waiting outside the mtc for buses that never come. It's about the equivalent of a man, stripped naked, lying on the side of the road.

In Luke 10:30–35 we read that when a "certain priest" came down that way and

saw that half-naked man, "he passed by on the other side." Likewise, a Levite, a minister in the sacred temple sanctuary, came and looked on that naked man. And seeing him where and how he lay injured, the Levite "passed by on the other side." But a Samaritan, a foreigner and a heathen, came where this naked man was, saw him, and did not look away. He looked straight at this man, this naked stranger, and took "compassion on him."

Gathering him in his arms, this heathen "bound up [the stranger's] wounds, . . . set him on his own beast," and, steadying him while they walked, "brought him to an inn, and took care of him." This foreign heathen told the innkeeper when he left the next morning, "Take care of him. When I return I will repay you whatever you have spent to heal my friend."

I recently heard an enlightening interpretation of this parable of the good Samaritan. Most religions teach the parable as the ideal of neighborliness. After all, Christ does ask the question at the end of the parable "Which now of these three, thinkest thou, was neighbour unto him that fell among the thieves?" (Luke 10:36).

But, gazing up at a stained-glass window in a European cathedral, Jack Welch realized that the parable has not always been taught this way. He saw, in perfect jewel-toned symmetry, a depiction of the Savior's life and the parable of the good Samaritan in an arched window. Wondering about the significance, he asked the curate who worked in the cathedral.

The curate replied that in the early days of the Christian church, the parable of the good Samaritan was taught as an allegory of the Savior's mission: The man Adam went down into the world, where he fell among thieves, who stripped him naked and left him lying there. Two religious men ignored his pitiful state and "passed by on the other side." But Jesus the Christ, who had nowhere to lay His head, saw the man Adam as he lay injured and had compassion for him. This Jesus gathered the man Adam and all his pos-



terity in His arms, bound his wounds with the balm of Gethsemane, and took him to the church. He told the innkeeper of the church to watch over Adam's soul, to take good care of this man. When Jesus came this way again, He would repay the debt He owed for the man Adam's soul.

The day we learned the (no-)duty-to-rescue rule, we also learned about good Samaritan laws. In some states the legislatures have enacted laws that require passersby to intervene if they see a crime being committed. The same laws also protect from liability those people who decide to help an injured person, should the injured person decide to sue them for making things worse. I suppose these are good laws. They force people to do good things, to help those in their community. I can't help thinking that whoever named the law missed the point completely.

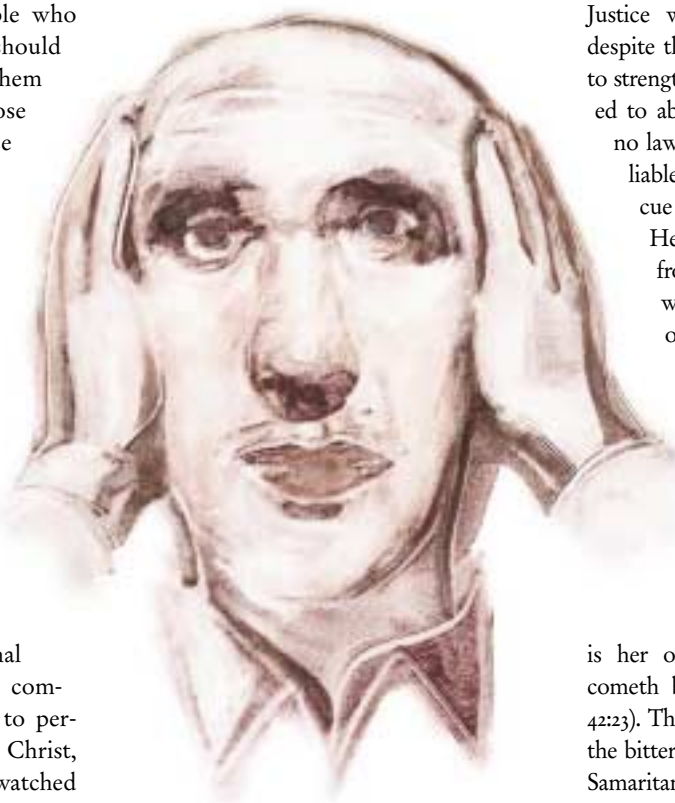
The good Samaritan did not act because he feared punishment. He acted because he had kindness in his soul, because his bowels were filled with compassion, and his whole soul was bent on mercy. He literally could not have acted another way. To call a law that forces people to be good after the title of the original being whose goodness needed no compulsion is ironic and only serves to perpetuate the myth of the austere Christ, the God of justice, the One who watched to see me fall.

I have learned, though, that there is another Savior, the other Jesus whom I seldom encountered in my Protestant Bible-study classes—the Christ of mercy, of compassion; the Christ who, though not bound by any eternal duty, chose to come to my rescue.

After class the day we read the casino case and studied the good Samaritan laws, I exited the Law School and sat down on the ledge that runs around the building. My gaze was filled with the rise of Squaw Peak and Y Mountain, not a half mile away. Above them the sky was that brilliant, brittle blue of late fall. I don't think I was thinking coherently; I was thinking

a feeling. All I could feel was a profound sense of awe, of inexpressible, bone-deep gratitude that He descended below all things to rescue me in my fallen state that I had brought upon myself "because of [my] own disobedience" (Alma 42:12) and that He stayed, despite His own suffering, to complete the act.

Paradoxically, after learning that one young man turned his back on a seven-year-old girl struggling for her life, my thoughts were lifted to the Savior (perhaps



in despair, perhaps in hope that the angels came to be with her when no earthly being would volunteer), to His unspeakable sacrifice, His indescribable bravery.

You see, according to American law, He didn't have to do a thing to help me—or you, for that matter. We've brought upon ourselves our own misery. We've lied, coveted, rationalized, committed, and omitted ourselves into our current state: cut off from the presence of God, subject to the demands of justice. According to tort law, the Savior has no duty to rescue us. He had nothing to do with putting us where we are.

"But He volunteered," the first-year law student objects. Yes, He did. And knowing what I know now about volunteers and rescues, I am even more moved by Christ's simple statement: "Here am I, send me" (Abraham 3:27). I don't know whether He knew just exactly what Gethsemane would be. I don't know whether one ever really is prepared for the nails and the crown of thorns. I don't know whether Christ knew He, legally, could turn back. If He had shrunk to drink the bitter cup that lonely night, we could not have held Him liable. Justice would still have been served. If, despite the fervent prayer, despite the angel to strengthen Him, the Redeemer had decided to abandon His eternal rescue mission, no law in this land would have held Him liable. Those whom He intended to rescue are in no worse state than when He started: we are still severed by sin from the presence of God. We're no worse off because He tried and failed or even tried and got tired.

But, thanks be to God, our Rescuer "has kindnesses in [His] nature" (Jeremy Glatstein, "Evil Actions Compel Us to Respond with Good," *San Francisco Chronicle*, 22 September 1998, A21). Thanks be to God that "mercy claimeth all which is her own" (Alma 42:24), which "mercy cometh because of the atonement" (Alma 42:23). Thanks be to God, the Rescuer drank the bitter cup. Thanks be to God, our Good Samaritan looked upon us and looked not away. Thanks be to God, His Son noticed us. From the very first council, He noticed us and our predicament. He never passed by on the other side. He traveled from on high to find those who needed rescuing. He saw me on the side of the road, lying injured, unable to save myself. He picked me up, bound my wounds with the balm of Gethsemane, and took me to His church, where He gave the bishop strict instructions to take care of me and my wounded soul until He could return to claim me and take me home. And return He will, because He always was, and is forever willing to be, my Keeper.

*Tessa M. Santiago is a third-year law student at the J. Reuben Clark Law School.*



# WHERE WERE YOU ON MARCH 9, 1971?

If you're old enough, you can probably remember when astronaut Neil Armstrong planted a heavy boot on the moon and uttered, "That's one small step for man, one giant leap for mankind," or when you—along with a nation—stared in a trance at a television screen after hearing the words "the president has been shot." You could certainly recall where you were when the world moved into a new millennium. For many in the charter class of the J. Reuben Clark Law School, the moment they first heard that there would be a law school at BYU made such a strong impression that they can visualize exactly where they were and what they were doing.

Monte Stewart of the charter class was sitting at a devotional in the east bleachers of the George Albert Smith Fieldhouse on March 9, 1971, when Elder Harold B. Lee, with no particular fanfare said, "At our meeting this morning we announced plans, which have been previously approved by the Brigham Young University Board of Trustees, to establish at this university the J. Reuben Clark College of Law" (Harold B. Lee, *Decades of Distinction: 1951–1971* in *SPEECHES OF THE YEAR* 3 [Brigham Young University Press, 1971]). Fittingly, the announcement came nearly one hundred years after the birth of the school's namesake on September 1, 1871.

## REMEMBERING THE BIRTH OF THE LAW SCHOOL

BY LOVISA LYMAN

Stewart, home from his mission only two months, had already decided to attend law school after graduation, and the thought that he would have something to do with that law school immediately entered his mind. When Elder Lee continued by saying, "This college will probably open in the fall of 1973 or thereafter as circumstances may dictate" (id.), Stewart quickly started calculating. He intended to graduate in 1973 and enter law school that fall. If the school opened later

new school, he immediately wanted to be in the charter class, because it was an opportunity of a lifetime to contribute to something that was just beginning. (See a related story on page 37.)

Scott Cameron, also a member of the charter class, heard the announcement in August 1971, just before he started his first year of teaching English at Ricks College. Though he wasn't eager to go back to school after earning two degrees at Stanford, he admits that it was the first time he had even con-



Early Law School faculty members Gerald Williams, Rex Lee, Edward Kimball, and Woodruff Deem face the charter class at the August 1973 orientation.

than 1973 (as it developed, many thought it would more likely be 1974), he would already be attending another school. He discounted his first impression as just a product of his "own neurons."

David Fischer did not do his undergraduate work at BYU, but when he heard about the

sidered attending law school.

Gary Hill was at the devotional with Monte Stewart. He had known he wanted to attend law school since second grade and would have liked to continue at BYU, but he had accepted the first offer he received, which happened to be Samford in Alabama. He

has no regrets about his years in Alabama, since he met his wife there, and has still had ample opportunity to make a long-lasting contribution to BYU as a law librarian.

Cheryl Preston, class of 1979, heard about the new college from her mother, who informed her that she could now attend BYU for law school, so there was no reason to even consider anywhere else—particularly if she was counting on her mother's support. "It turned out great, but BYU was not what I had in mind at the time," admits Preston, now a professor at the Law School.

BYU Law School associate dean Constance Lundberg was a teaching assistant at the University of Utah Law School when a colleague pontificated over coffee that the new school wouldn't "amount to a hill of beans." BYU would need at least one nationally known Mormon legal scholar, he said, and in his estimation there were only three in the United States, one of whom was Carl Hawkins, "who would not demean himself."

Dean Reese Hansen, like Constance, was a third-year law student at the University of Utah on March 9, 1971. He had heard whisperings about a BYU law school but thought it unlikely. The announcement of the BYU Law School was "quite a surprise," but what he recalls more than that is Rex Lee's visit to Dean Sam Thurman. Dean Thurman rounded up a few of the law review students to meet Lee, whom Hansen found to be "an interesting young guy." Only later did it

occur to Hansen that "Sam was trotting out some of the students Lee would want to be aware of."

In his book *The Founding of the J. Reuben Clark Law School* (BYU Studies, 1999), Carl Hawkins recounts the spiritual nudging he experienced after the initial announcement and the nudging of other faculty, including founding dean Rex Lee. But potential students and faculty were not the only people who wanted to be part of a new and daring endeavor nor the only ones who felt their spiritual neurons react. Peter Mueller, Carolyn Stewart, and Curt Conklin have much to say about their early involvement in the Law School. All three were employed by the school before it opened and have continued to work there ever since.

Peter Mueller was the first Law School employee recruited. He completed his master of library information science degree in December 1970 and immediately started working as a full-time Germanic literature cataloger at the Harold B. Lee Library. Soon after the March 9 announcement, Ernest L. Wilkinson called Mueller into his office. Wilkinson, whose retirement as president of BYU had been announced the same day the news of the Law School had, was assigned to get the school started by seeking out faculty, staff, students, and a location for the school.

Characteristically, Wilkinson had pulled a file on Mueller and determined that he was right for the job of developing a collection strategy and implementing procedures for the new law

# The Universe

Brigham Young University • 424-431-4321 • Provo, Utah • Vol. 25 No. 64 • January, May 1, 1973



## Groundbreaking ceremonies today

Groundbreaking ceremonies for BYU's new Law Building are scheduled for today at noon. All students, faculty and the public are invited to attend the event, which will take place at the site of the new structure in the parking lot east of the Harmon Center.

Remarks will be given by BYU President J. Reuben Clark II, Dean Rex Lee, dean of the J. Reuben Clark Law School, which will start its first students this summer, and the president of the state of Utah, Don Hansen.

"An important landmark" in the Law School's history, actual construction of the building is expected to begin very shortly, said Dean Lee.

The date of the groundbreaking, May 1, is also significant in Law Day throughout the United States. Law Day is designed to "bring people more aware of the function of the rule of law in our society," said Dean Lee.

Patton Construction Company of Salt Lake City has been awarded the contract for the structure, 97,432 square feet building. The structure was designed by Palmer and Peters, Salt Lake City architects.

Completion date for the building has been set for March 1977.

Until the new campus structure is completed, classes will be held in temporary quarters in the St. Francis School in Provo. The law library has already been set up in the building, which has been leased from the Catholic Church.

Small dimensions of the building are 200 feet by 147 feet, with the larger dimension running north and south. The structure will be divided into three main parts. The three-story library complex will be located on the north, the student office and administrative services in the center, and the two-story lecture and seminar rooms complex on the south end.

An elevated walkway over the Harmon Center will connect the third level of the Law Building with the rest of the campus. The walkway will provide access to both the Law School and the parking lot, thus eliminating pedestrian traffic across Harmon Center at that point.

The Law Building will contain the 200,000 volume library, 12 lecture and seminar rooms, offices for 15 faculty members, administrative offices and areas for teaching assistants, food service, restrooms and lockers.

Meeting places for the new BYU campus branches will also be located in the building, and one of the conference rooms will serve as the high council room for a campus stake.

Dean Lee said the building is being designed so that the classroom wing can be closed off from the rest of the school. This will allow student teachers to conduct their activities during teaching assignments without interfering with students and faculty members working in the office and library areas.

A computer room of the building will be the 400-square-foot study center in the library. Book room will be assigned to a student, providing him with a computer study area, a locker and a coat hanger all in one place, explained Dean Lee.

Meeting arrangements in the lecture rooms will also be different from the usual. Students will be placed in a class, then to their assignments during class, said Dean Lee. The most common will be the study room to use the computer while making that in traditional with some law schools, he said.

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Architect's rendering of the J. Reuben Clark Law School to be located in the Harmon Center parking lot. Groundbreaking ceremonies will be held today.

### Staff members resign, Dean fired

## Watergate breaks open

WASHINGTON (AP) — President Nixon today announced the resignation of his first, Richard M. Helms, and his White House aide, John D. Mohr, in a challenge to the Watergate affair.

The first White House counsel, John D. Mohr, said in a statement that he had resigned because of the "unpleasant and unproductive" nature of the Watergate investigation.

Helms, who had been in the White House since 1969, was the first of several high-level officials to resign in the wake of the Watergate scandal.

Helms said he had "never suspected and accepted" Dean's resignation but was "in a position to accept it as a necessary part of the Watergate investigation."

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## Elder Benson to speak

BYU President J. Reuben Clark II, dean of the Law School, will be today's featured speaker at 10 a.m. in the Harmon Center.

A member of the Council of Twelve Apostles since October, 1943, Elder Benson has served the LDS Church in a capacity as the fourth high priest since 1951 and as a stake president of the Salt Lake and Washington stakes. In 1954 he was appointed president of the European Mission, a position he held until 1960.

A member of President Dwight D. Eisenhower's Cabinet during his administration, 1953-61, Elder Benson attended Utah State Agricultural College and was graduated with honors from BYU. He also attended Iowa State College, where he received his M.S. degree, and the same graduate work at the University of California.

He is the recipient of several honors, having received the honorary degree of doctor of laws from Brigham Young University in 1953. BYU's distinguished service award



Elder J. Reuben Clark II

library. Bruce Hafen, assistant to the university president, was also in the meeting. Both men told Mueller they had nothing to offer him in the way of a permanent appointment, staff, accommodations, or equip-

ment. Despite the uncertainties, Mueller agreed to be the draftsman. He would be setting up the new library from a small office in the Lee Library.

Mueller scrounged up an Alder manual typewriter and

some paper and began his work. Wilkinson had already begun to order books, and Mueller continued to do so at an average price of \$25 a volume. Even at that price, less than a quarter of the cost of a

volume today, the estimated expense of establishing a first-class collection, building a facility, and hiring faculty was daunting. Once Dallin H. Oaks succeeded Wilkinson as president of BYU, he provided the board of trustees with a revised estimate of costs. "After some second thoughts about whether to go ahead with the law school, the board of trustees eventually approved the higher cost proposals" (id. at 8). Carolyn Stewart observes, "The board of trustees was—and always has been—willing to do what was needed for a first-rate school."

rate from the existing library. You really build a law school not only theoretically but physically around the library." Lee thus made it clear that though the law library and its one employee were in the Lee Library, the law library would be autonomous—not the case in all law schools—and that the library was a priority.

At the end of 1971, another BYU librarian, Harry Dees, joined Mueller in the law library. Dees had been on loan to the University of Utah teaching its law library staff how to recatalog their books using the Library of Congress

representative depository long before law libraries generally were afforded depository status. The collection he built at the Law School included many rare and valuable documents, some of which have since been moved to the Lee Library.

Early in 1972 Mueller heard rumors that several University of Utah people would be coming on board. Since it was tacitly understood that BYU Law School would not pirate University of Utah Law School faculty or staff, he was very curious about whom these people might be. The first to appear was Carolyn Stewart.

When she heard about the new BYU Law School, Stewart first wondered what the University of Utah would have to do with the new school. A BYU graduate in business education and accounting, Stewart had been administrative assistant to the dean of the University of Utah Law School for six years and secretary to the acting dean for two years previously. In the months following the announcement, she became less and less content with her job. Finally a "strong, overwhelming feeling" convinced her "eight years at one job was enough" and that she should move on. She tendered her resignation and accepted a secretarial job at a manufacturing company, planning to stay there only until she found something more to her liking.

The second person to arrive from the University of Utah Law School was law librarian David Lloyd, and though he came later than Stewart, he was instrumental in her hire. Lloyd was a recent law graduate who had been managing editor of the *Utah Law Review*. In addition,

he had worked part-time in the University of Utah law library for four years under one of the best-known law librarians in the country. Though Lloyd didn't remain at BYU for long, his initial contacts and developmental efforts were vital. One of his foremost contributions was alerting Bruce Hafen, a University of Utah law graduate who had benefited from Carolyn Stewart's excellent skills, that Stewart no longer worked at the university and thus might legitimately be offered employment at BYU without straining collegial relationships. Hafen contacted Stewart in March, and she reported for work at BYU on April 2, 1972. Lloyd himself arrived at the beginning of May.

Other University of Utah graduates soon followed: Randy Peterson, who became Lloyd's assistant librarian, and Reese Hansen and James Backman, former note editors for the *Utah Law Review*. Hansen and Backman would continue with their fledgling legal practices while assuming the role of upperclassmen at BYU. As such, they and a few other "newly minted lawyers" worked as small-section teaching assistants and legal writing instructors. Later Hansen and Backman helped get the *BYU Law Review* started. Thus, Hansen claims to have always been at BYU, even though it wasn't until the second year of school that Lee convinced him to take a full-time faculty position teaching commercial law.

Another newly minted attorney came in June 1971, when Hafen hired recent Duke graduate David Thomas for six weeks to evaluate legal bibliographies and make sug-



The March 9, 1971, edition of *The Daily Universe* headlines the announcement of the J. Reuben Clark Law School.

Meanwhile, the search for a dean was well underway. On November 9, eight months to the day after the school was announced, Oaks disclosed the appointment of Rex Lee. In a November 10, 1971, *Daily Universe* article reporting his appointment, Lee said that the Law School could begin with only four teachers and 50,000 volumes in the library. The biggest challenge, as he saw it, was finding a law librarian, who, he said, were as "scarce as hens' teeth." He emphasized: "The law library is an essential and absolute imperative for the law school and should be sepa-

system. LC cataloging did not yet have official instructions for legal materials but did promise to be a much better system for accessing large collections than had been the old Dewey system. The BYU law library would use this system and needed Dees' expertise. Dees not only understood cataloging but was a government documents specialist with a network of library colleagues through whom he could get government publications, the lifeblood of legal study. By May 1972 his contacts with congressmen resulted in the library being designated as a

gestions about which books to order. In July Thomas left for a stint as law clerk for Sherman Christensen but was subsequently hired in 1974 to replace Lloyd as a faculty member and law librarian.

Carolyn Stewart reported for work at Saint Francis of Assisi, a former parochial school three blocks south of campus that BYU had leased for three years while the new law building was being constructed. The first day she walked into "Saint Reubens," as Lee said it should be known in the "true spirit of ecumenism" (*Daily Universe* April 4, 1972), she saw nothing but clean bare floors and empty walls badly needing paint. No paint was in the plans, however, nor were other renovations, though some of the lighting was subsequently upgraded. The books were still stored at the Lee Library but would soon be moved to Saint Francis. Stewart's office was in the school lunchroom/kitchen area, a long room close to the south entry door and just past the glassed-in reception area that would be dubbed "the fish bowl" and frequently adorned with paper fish. She and Rex Lee would share the long room with a divider between them. Their furniture, all from campus storage under the stadium, was mismatched and unappealing. It was to this room that curious potential students and prospective new employees came to seek an audience with Lee, whom Carolyn Stewart met for the first time at the beginning of June.

Two of these visitors were Monte Stewart and his friend Mark Zobrist. In the fall of 1972, they had just begun their senior

year at BYU, and their curiosity was piqued about the new dean. Lee welcomed them with his characteristic graciousness but immediately began recruiting them when they disclosed their LSAT scores. Monte Stewart recalled his feelings: "There wasn't a chance I'd come to BYU Law School, but it was a fascinating experience talking to Rex Lee." Lee did not relent in his efforts until, six months later, they both agreed to enroll.

Of these days Carolyn Stewart says, "By the time students came to law school, they all felt they were Rex's good friends." When school began, this familiarity would occasionally have a downside. Students sometimes had unreasonable expectations, like dictating the curriculum and deciding such trivial matters as whether bells should ring at the ends of classes. Stewart recalls, "Two or three students would go into Rex and say it was demeaning to have bells rung, and Rex would instruct me to call Physical Plant and get the bells turned off. Then a few days later, more students would complain that classes were running overtime because no bells were rung, and I would again call Physical Plant and get them reconnected."

Even worse, she says, was the first round of final exams when Woodruff Deem told students taking his morning final that they could take as long as they needed. After two or three students kept him waiting for their tests until one a.m., Deem set limits. Generally student suggestions worked out, like asking the university to send representatives to Saint Francis to do registration, collect tuition payments, and take

book orders, which was done for two years.

Peter Mueller moved his small operation from the Lee Library to Saint Francis soon after Stewart arrived, installing the law library in the south classroom wing. A frequent visitor to Mueller's office was Curt Conklin, Mueller's home teaching companion. Conklin fully intended to pursue a teaching career in his old mission field in Australia once he completed his degree in history and political science, but the job market wasn't encouraging. Mueller suggested he learn library processing. Conklin began working at Saint Francis in June 1972 as serials librarian but later moved to cataloging, completing graduate work in library science.

Meanwhile Hafen, Lee, and Oaks were recruiting students at a fast clip. New faculty joined the cause as soon as they were proselytized. Standards announced were generally much lower than those of the school today: a GPA of 3.0 and an LSAT in the high 500's (*Daily Universe* April 4, 1972), but high-level efforts were made to capture the interest of students headed for Ivy League schools. Stewart spent a great deal of her time making travel arrangements for Lee's faculty and student recruiting trips. Lee optimistically expected 1,000 applicants, because all law schools across the country were filled to capacity.

While the staff was trying to make the most of the situation at Saint Francis, architects were refining plans for the school's permanent home with a projected completion date before the second class arrived. To refine their design, the archi-

tecs visited many law schools. In retrospect, Stewart suggests that the final result might have been more user-friendly had some academics accompanied them in their travels. Of course, no one could be spared since all were preoccupied with finding faculty and students for the first class.

The site for the new Law School was a prime piece of university real estate east of the Wilkinson Center being used as a student parking lot. World War II and Korean War army barracks had once occupied the place. The barracks had subsequently been used as student housing, and Rex Lee himself had lived there as an undergraduate. Long-range plans dating from the 1960s had envisioned the spot as the terminal end of a mall beginning with the Mathematical Sciences/Computer Building and extending eastward. Several possibilities had been considered for the area, but the Law School was ideal because it was self-contained. For any needs on the main campus, an elevated walkway would be sufficient and keep traffic moving underneath. Undergraduates were assured that they would only lose 250 parking spaces with the construction.

Law Day, May 1, 1973, was the bitterly cold date when "asphalt" was broken for the building using a front-end loader. Atop the tractor rode Lee, Oaks, and Elder Ezra Taft Benson. Once soil was exposed, conventional shovels took over while coatless onlookers braved the icy sleet. A fortunate few huddled under blankets.

It wasn't until the construction company got to the seri-



ous digging that an underground river that ran from Slate Canyon to Utah Lake was discovered. Fortunately, they were able to drive pylons into bedrock and proceed.

Within one year of the Law School announcement, the library had gathered 20,000 volumes, many contributed from personal libraries, including those of Wilkinson and Oaks. The library was one third of the way to the 60,000 needed for accreditation. Roy Mersky, librarian at the University of Texas at Austin, was hired as a consultant in planning the library. The Austin library, considered one of the best in the nation, had 300,000 volumes for a student body of 1,500. Mersky hosted Lloyd and Mueller in Texas for intensive library training, after which the two BYU law librarians visited 50 law libraries across the nation, and Mueller returned to Provo. Some of these libraries, including the University of Utah, the University of Texas, Stanford, Yale, and the University of Chicago, donated or sold books to BYU. Besides visiting libraries, Mersky and Lloyd contacted publishers and dealers looking for the best buys on new and used books. Mersky came to Utah for the month of August 1972 and gave his stamp of approval to the growing collection. (Mersky would return to Utah in the mid-1980s to learn from Thomas and Mueller how to automate a law library, as by that time the BYU law library had become a national leader in library automation.) Among the resources ordered were four sets of *West's National Reporter System*, which began to arrive by semitruckload.

In September 1972 Rex Lee was able to say in *BYU Today*, "We already have the lawyer's

basic working collection of books. In fact, most of the research that a working lawyer could do could be done in our library right now." On October 12, 1972, a *Daily Universe* article reported that the law library was open weekdays from eight to five for student, faculty, and public use of the reference collection. Special permission was required to check out books, and attorneys Lloyd and Peterson provided reference services but—as is still the case at the reference desk—did not give legal advice.

The summer before the Law School opened its doors at Saint Francis, Conklin worked alongside several students accepted to the charter class. One of these was Scott Cameron, whose initial interest in Law School had been fired up by Bruce Hafen's active recruiting. Cameron and Conklin often competed to see who could carry the most books to the shelves, but more often Cameron stamped books as library property for hour after hour, singing (though he tries to deny it now), "Rubber ball, come a bouncin' back to me."

By the time classes began the fall of 1973, the collection had grown to 100,000 volumes, a larger collection than those of half the law libraries in the nation. Included were materials from every state, the British Commonwealth, and some emerging African and Asian countries. Most of the collection remained boxed and stored, but a basic collection was displayed on shelves.

Ranges of shelves were installed down the center of the gymnasium, dubbed "the great hall," leaving space for a large-section classroom with a teacher podium on the stage on one side and shelving interspersed with

study tables filling the remainder. More shelves occupied the old west-wing classrooms along with eight-foot-long tables. The tables were divided in half with tape, marking the beginning of BYU's tradition of individual study carrels. BYU borrowed the idea of individual carrels from the University of Houston, which has since, like all other law libraries except BYU, ceased to offer a carrel to every student. Other study tables went into the shower room and refrigerator area. (One enterprising student would later commandeer a custodial closet, where he laid a plank of wood over the sink and moved in a chair.) These study arrangements were quite spacious during the first year, but when the new building was not completed for the second year, carrel space was cut in half.

Besides the large-section space in the great hall, the chapel was also used as a classroom, though the lease stipulated it never be used for religious purposes. (Some students would quip that the confessionals there were quite appropriate for lawyers.) The second-floor private nuns' kitchen and dining area, complete with fireplace, served as a small-section classroom, faculty lounge, and legal research training area. Nuns' cells, each with a little window, became faculty offices.

Accommodations were less than desirable, but students in the new building would later admit to missing Saint Francis' meager spaces. "Because Saint Francis was smaller, students and faculty were all involved in decision making," Stewart nostalgically remembers. "In order to get anywhere, you had to pass by others—be physically nearer. It was easier to bond and develop relation-

ships. When students moved to the new building, they felt they were leaving something behind, something they'd never have again. The new building was spacious but impersonal."

As opening day, August 27, 1973, approached, five faculty members—Carl Hawkins, Edward Kimball, Dale Whitman, Woody Deem, and Keith Rooker—in addition to Rex Lee, Bruce Hafen, Dallin Oaks, and David Lloyd, were prepared. Ernest Wilkinson had admonished on March 9, 1971, to teach the "same relevant subjects as at any other law school," but whether they would "begin with different premises" and come up with "different answers" remained to be seen (Ernest L. Wilkinson, *Decades of Distinction: 1951-1971* in *SPEECHES OF THE YEAR* 9 [Brigham Young University Press, 1971]).

The 157 entering students, 12 of whom were women, selected from more than 400 applicants were eager to begin. Administrators, faculty, students, and staff seemed to share the conviction that the school was supposed to *be* though they did not all agree on the *why*. BYU President Oaks voiced his own certainty at the founding ceremony: "[T]he trustees of Brigham Young University, whom we sustain as inspired leaders, have decided that Brigham Young University should have a law school at this time. I have received a confirmation of the divine wisdom of that decision and am quite content with that. The special mission of this school and its graduates will unfold in time."

For more information on the history of the Law School, visit [www.law2.byu.edu/Jrcls/Brochure.html](http://www.law2.byu.edu/Jrcls/Brochure.html).



## GIFT COMMEMORATES LAW SCHOOL 30TH ANNIVERSARY

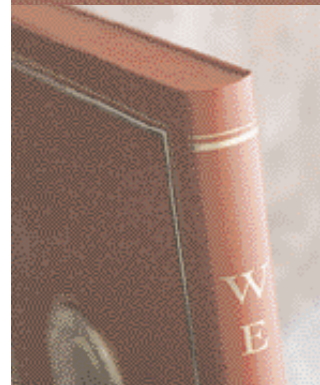
An inaugural exhibition featuring authentic reproductions of the founding documents of the United States celebrates the 30th anniversary of the announcement of the J. Reuben Clark Law School. The recently acquired documents are part of a limited-edition folio titled “We the People,” produced to commemorate the bicentennial of the Constitution, and were given to the Law School by David Fischer of the charter law class. On permanent display in the Howard W. Hunter Law Library, the collection includes facsimiles and typeset versions of the Declaration of Independence, the Constitution, and the Bill of Rights.

The founding documents have played a pivotal role in the Law School from its inception. Referring to the importance of these texts, former Chief Justice Warren Burger admonished students at the Law School dedication in 1975 “to execute their trust in keeping with the traditions of Western Civilization, with the ideals of the Declaration of 1776 and the Constitution—always guided, as the authors of those great documents were guided, by a Divine Providence” (see [www.law2.byu.edu/Jrcls/Brochure.html](http://www.law2.byu.edu/Jrcls/Brochure.html)). His remarks echoed those of Harold B. Lee, then president of the Council of the Twelve and a member of the First Presidency, when he announced the school March 9, 1971:

*It is a fact that this Church has looked upon the Constitution, as the Lord has revealed, as having been framed by men whom God raised up for this very purpose. Where else but on this campus should we be concerned about having a school of law where we can train lawyers who will defend the Constitution of the United States, keeping in mind that the Prophet Joseph Smith is quoted as having said that the time would come when the Constitution may hang as by a thread and the elders of the Church may have to step forth to help save it. [Harold B. Lee, *Decades of Distinction: 1951–1971 in SPEECHES OF THE YEAR 3* (Brigham Young University Press 1971)]*

The reproductions of the founding U.S. documents were imprinted on vellum, requiring 5,000 sheepskins to produce the 250 copies in the edition. The typescript versions were produced from hand-set lead type on a hand press, the only surviving working model of its kind and originally used to print promissory notes issued by France’s revolutionary government.

Accompanying the vellum reproductions of each of the founding documents are reproductions of related documents and images from the late 18th century including woodcuts, engravings, and etchings, some watercolored by hand. For example, following the Declaration of Independence is a reproduction of Thomas Jefferson’s edited copy, and following the Constitution is a reproduction of that document with George Washington’s annotations. The loose sheets of the folio are encased in



*The red calfskin case of the “We the People” folio features bronze reproductions of historic coins.*

a 22-inch-by-30-inch red calfskin box inlaid front and back with bronze medallions sculpted from coins of 1787 and 1792.

Publisher Edouard Weiss, director of the Gallery Art Concorde in Paris, created “We the People” especially for the United States in cooperation with Ann Reeves, an artist and a former museum curator in the United Kingdom. Reeves researched hundreds of docu-

*The Declaration of Independence and other historic documents in the folio were printed on vellum using a vintage hand press. ►*

*A rare engraving of George Washington in civilian dress is circled by seals of the original 13 states and the Great Seal of the United States. ▼*

ments available from the period, with Weiss's help selected those to include in the folio, and designed the presentation. American artist Paul Jenkins produced an original triptych lithograph on stone especially for the edition.

David Fischer became involved with the "We the People" folio when Weiss and Reeves came to the United

States to present copies to President Reagan, Chief Justice Berger, Vice President Bush, the United States Congress, the Library of Congress, and several national libraries. Weiss and Reeves enlisted Fischer, who had worked closely with President Reagan for years, to arrange for the presentations. In appreciation for his successful efforts, they presented Fischer with a copy of the folio. Most of the folios were sold to private collectors, the \$25,000 price tag being prohibitive for libraries. Those that have found their way into libraries have done so through the generosity of donors like Fischer.

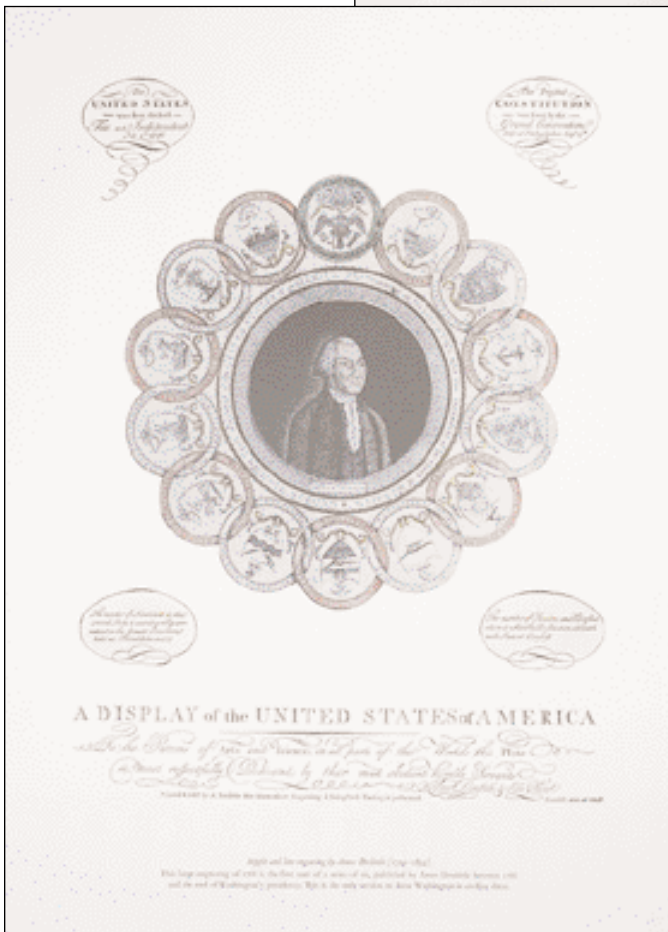
Characterized as an exceptionally talented entrepreneur by former classmate Lew Cramer, David Fischer served on Governor Reagan's campaign staff during his third year of law school and after graduating in 1976. Subsequently he was appointed Reagan's executive assistant in 1978 and served as a key member of the strategy group that planned the 1980 campaign. During Reagan's first term, Fischer was also special assistant to the president managing the Office of the President. After leaving the White House for private industry, Fischer was appointed by Reagan and later Bush as the u.s. commissioner on the International Boundary Commission from 1985 to 1991. Additionally, he advised Senator Orrin Hatch on his first senate campaign and worked on Hatch's Washington, D.C., staff.

After leaving full-time government service, Fischer's private sector involvement began with a period as senior vice president and chief administrative officer of Huntsman Chemical. In 1989 he purchased Cypress Packaging, a bank-

rupt manufacturer of packaging materials in Rochester, New York. Under his direction as chair and CEO, Cypress became the nation's leading supplier of specialty film used in packaging fresh produce and a major supplier of packaging materials for Dole, Kodak, and Xerox. When W. R. Grace purchased the company after seven years of operation, Fischer continued to manage and expand the operations. During the time Fischer owned Cypress, President Bush appointed him as a member of the u.s. delegation to the United Nations Human Rights Commission in Geneva, Switzerland.

Currently, Fischer is again in Washington, D.C., simultaneously serving as a board member and executive of an international financial services firm headquartered in New York City and as a partner in a Washington, D.C.-based consulting firm whose partners are former Senator Jake Garn and fellow charter class members David Lee and Lew Cramer. Last year Fischer was an early investor, board member, and executive of a successful Internet B2B start-up.

The "We the People" folio went on public display in the Hunter Law Library on March 9, 2001, in a specially constructed display case that allows for continuing rotation of its many components. The display will be a tangible reminder of President Harold B. Lee's expression of the goal of the Law School: "If we can train lawyers who are soundly based in the Constitution, we will have made a great step forward in helping to send out into the world men who will uphold, defend, and protect the basis of the foundation of the great United States of America" (Id.).





## LAW ALUM DAVID NUFFER SERVES AS UTAH BAR PRESIDENT

As he nears the end of his year as president of the Utah State Bar, David Nuffer, '78, has found that the best way to magnify his contribution to the association has been to widen his vision. "Because the Utah Bar has a commitment to long-range planning, my goal has been to focus on the prior and future needs of the Bar, avoiding short-term programs," he says. "That is an achievement in itself, since short-term offices can tend to divert resources to short-term goals."

David's term as president began last July; however, he has served in the association since 1994, when he was made a commissioner. While he believes that "the office [of Bar president] is more like being chair of the commission than being a four-year executive elected office," he was "surprised at the magnitude of the workload as president": he now spends 60 to 80 hours a month at Bar work, compared to 20 to 30 hours a month in previous positions.

David attributes technology as his entree into service in the Utah State Bar. After doing a CLE for lawyers on computers in

the 1980s, he was asked to help the Bar move from its AS400 system to another system, for which he recommended networked PCs. From 1980 to 1991 he served on the Utah Supreme Court Special Task Force on the Management and Regulation of the Practice of Law, an experience that familiarized him with all aspects of Bar work. He relates, as a commissioner for the Bar a few years later, "I proposed the commission look at the emerging 'internet thing' (as I called it), which I predicted might be as big as the fax machine!" Made chair of the Utah State Bar Internet Services Committee in 1995, David says that lately his "emphasis has moved from technology to 'change management,' which is the real result of technology."

A graduate of what the Law School's charter class referred to as the "third class," David prides himself that he was a member of the first class to have its three years of law school in the new J. Reuben Clark Law School Building. Although he admits he had "no St. Francis experience," he does remember the narrow stairwells of the new building

and how on his orientation tour someone remarked on the monastic existence those walls forebode. "Honestly," he adds, "being on a Church school campus through the potentially dislocating experience of law school was very good. I am still impressed by the outstanding faculty and student 'cast.'"

Actually, it was a "dislocating experience" that helped nudge David toward law school. Leaving the tranquil surroundings of Oregon, where as a boy he lived in a small community where his family ran a tree nursery, he moved to the suburbs of Chicago in June 1966. The racial rioting and attacks on civil rights marchers that summer made history, and they also made an impression on David, who was entering his high school years and was shocked by the prejudice and hatred. "The transition was very unsettling for me," he recalls.

David's devotion to the practice of law has served the profession well since he graduated from the J. Reuben Clark Law School in 1978. Just four months after being admitted to the Utah Bar, he and Steven E. Snow started their own prac-



tice. Originally named Snow, Nuffer, Engstrom, Drake, Wade & Smart, after its six founding BYU Law School graduates, Snow Nuffer now has more than 20 attorneys working at the firm's offices in Salt Lake City and St. George. David says he works "half time in the practice and half time as a part-time U.S. magistrate judge."

In addition to his work in the firm, at the bench, and for the Bar, David has an active family life: he and his wife, Lori, he says, "have loved raising a family in Southern Utah, where the out-of-doors is a way of life." They and their seven children, who range in age from 9 to 25, have enjoyed many a trip to Zion, Bryce Canyon, and Grand Canyon National Parks as well as river running the San Juan—so much, in fact, that David and Lori have a part-time hobby of river guiding in Eastern Utah.

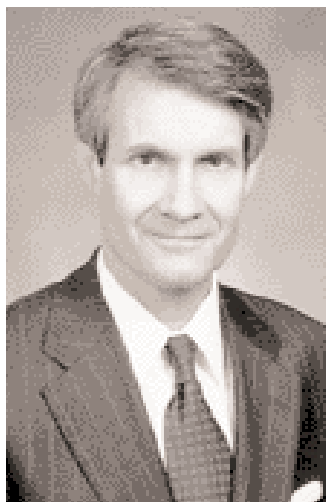
## THOMAS GRIFFITH RETURNS TO BYU

For Tom Griffith, accepting a job as BYU's general counsel and assistant to the president was just another exciting opportunity in an eventful legal career.

After serving a mission for the Church in South Africa and Zimbabwe, Tom graduated from BYU summa cum laude with a bachelor's degree in humanities. He returned to his native Washington, D.C., area, where he served for three years as director of the Church Educational System over a three-stake region. Tom then shifted his professional emphasis to the law, attending the University of Virginia Law School, where he was an editor of the *Virginia Law Review*. Upon graduation he accepted a job with the North Carolina firm of Robinson, Bradshaw & Hinson. There he specialized in commercial, corporate, employment, and First Amendment litigation. In 1989 Tom joined the Washington, D.C., firm of Wiley, Rein & Fielding, where he became a partner.

While working in Washington, D.C., in 1995, Tom was asked by then Senate majority leader Bob Dole to serve as Senate legal counsel, its chief legal officer. For Tom this was one of the most rewarding professional experiences of his career. Recognizing the non-partisan responsibility of his office, he worked to represent the institutional interests of the Senate. His resolve to remain nonpartisan produced remarkable results: within a short time he earned the confidence and respect of both the Republican and Democratic leadership.

Because he "played it straight" with both sides of the



aisle, Tom was invited to counsel the Senate on many controversial matters. The apex of his service there was his participation in the impeachment trial of President Clinton. One of Tom's greatest memories from that experience came the day before the impeachment trial commenced, when he met with the Republican and Democratic caucuses and taught the senators about the history and purpose of impeachment procedure. Sensing the historical significance of the moment, the senators were a very attentive audience, something any teacher would have enjoyed.

After serving as Senate legal counsel, Tom returned to work for Wiley, Rein & Fielding before being asked last summer to come to BYU as general counsel and assistant to the president. He loves his alma mater, the associations he has at BYU, and the spiritual nature of teaching truth and building the kingdom of God. For Tom Griffith, being a teacher and an advocate are more than just professions—they are opportunities to serve his fellowmen and the Lord.



Michele Cheney,  
Tessa Santiago, and  
Ryan L. Marshall

## MOOT COURT TEAMS TRIUMPH

BYU's moot court teams have experienced a season of unparalleled success in all of the competitions in which they have entered this year. Students on next year's BYU traveling teams will have their work cut out for them trying to live up to the standard of excellence demonstrated by the three teams sent to represent BYU at the Marshall-Wythe School of Law at William and Mary, Fordham University Law School, and Duke University School of Law.

Setting the tone for what would soon become a remarkable semester for the BYU moot court program, the team of Michele Cheney, Ryan L. Marshall, and Tessa Santiago traveled to the College of William and Mary at Williamsburg, Virginia, to compete on February 23 and February 24, 2001, in the 30th Annual William B. Sprong, Jr., Invitational Moot Court Tournament. The team's outstanding performance resulted in a first-place tie between BYU and two-time defending champion, the University of South Texas. One week later

the team of Anita Montañó, Bill Sawkiw, and Adam White traveled to Fordham University to compete in the Irving R. Kaufman Memorial Securities Law Moot Court Competition. The team's strong performance propelled BYU into the semifinal round.

Capping off the moot court program's great start in the year 2001, BYU's three-member team consisting of Jennifer Brown, Chad Grange, and Lance Locke participated in the Rabbi Seymour Siegal Memorial Moot Court Competition at Duke University on March 2 and March 3, 2001. Facing two-time defending champion Southern Methodist University in the final round of the competition, the BYU team won the competition outright, giving BYU its first ever first-place finish at the annual Duke University competition.

Congratulations are extended to all of these moot court participants for their stellar representation of Brigham Young University in these distinguished interschool competitions.

—Lance H. Locke

**Clark Memorandum**

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