

Fall 2003

Clark Memorandum: Fall 2003

J. Reuben Clark Law Society

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THIRTY YEARS OF CLARK MEMORANDUM

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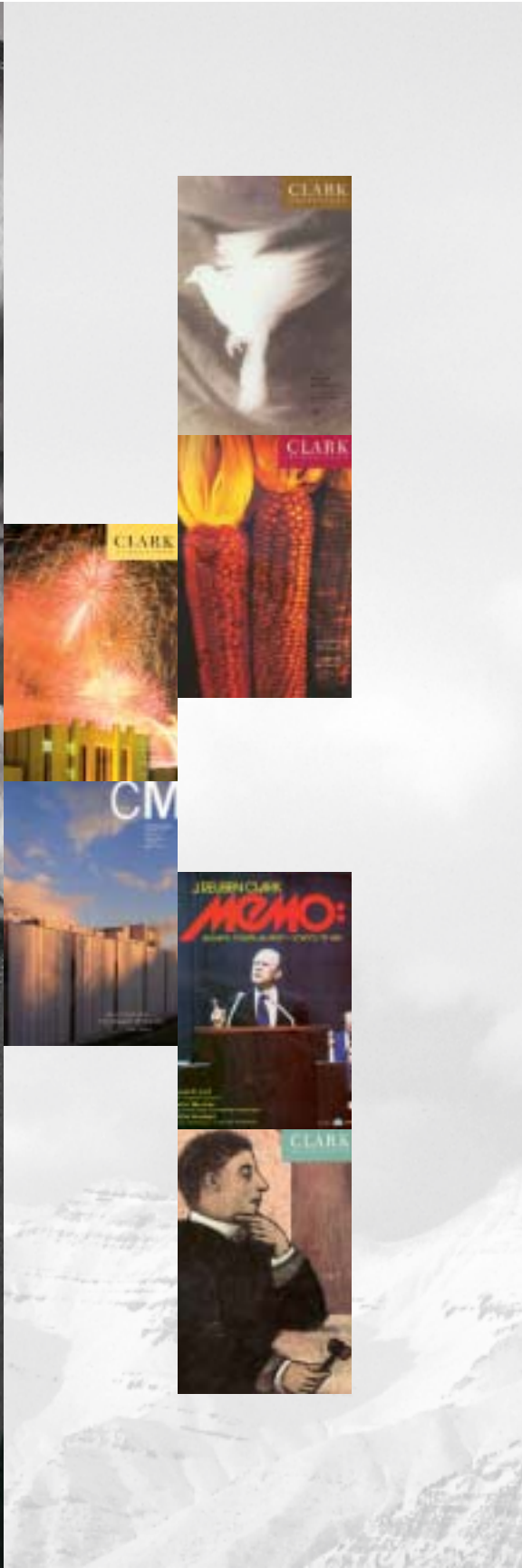
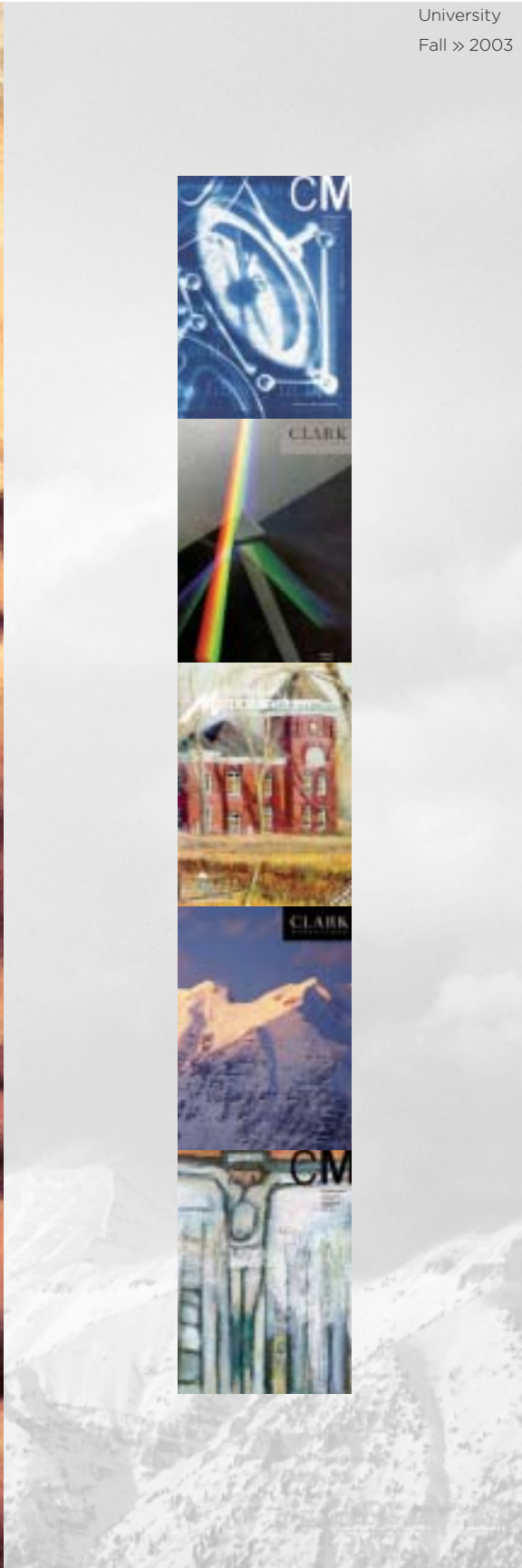
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Law School

Brigham Young

University

Fall » 2003



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The J. Reuben Clark Law Society
draws on the philosophy and
personal example of the Law
School's namesake, J. Reuben
Clark Jr., in fulfilling the following
mission: We affirm the strength
brought to the law by a lawyer's
personal religious conviction.
We strive through public service
and professional excellence to
promote fairness and virtue
founded upon the rule of law.



WORDS OF



words of



by Constance K. Lundberg

The following devotional address was presented in the Marriott Center at Brigham Young University on March 11, 2003.

Good morning. I am happy to be here today, though I feel like the speaker in church who said she felt inadequate standing before the congregation. One sister said to another, “Isn’t she humble?” And the other responded, “That’s no real accomplishment, she has a lot to be humble about.”

Some of my students are sitting here thinking, “No joke!”

I do feel overwhelmed at the prospect of attempting to share something new and of value as I stand in the footsteps of the great men and women who have been here before me. I pray I can share some of my life and thoughts in a way that may help some of you have a new and useful perspective about words and their place in a Christ-centered life.

Words are my tools. As a librarian I collect, catalog, and preserve them. As a lawyer, which is my principal profession, I search them out, savoring the power, sound, feel, and nuance of them. As a mother, words are something I teach, and teach with—a method of motivation, reward, and reprimand. As a person of faith, they are second only to spiritual promptings as a form of guidance, comfort, and inspiration.

Lately, however, I have observed a distressing escalation of the use of words to hurt, anger, divide, and make war. Perhaps as a law professor I should approve of the trend. It does, after all, make well-paying work for many of our graduates. However, I have viewed myself as a solver of problems and a peacemaker, not as a warrior. I have not found entertainment in *L.A. Law* or its more recent progeny. Neither am I comfortable with the wars of words that rage around us.

Today I would like to talk about the power of words. I would like to remind you of some of their magic. There is nothing arcane about words. They are not supernat-

ural. They are like light and gravity—they are central to our existence, and, because they are pervasive, we often fail to see them or recognize their power and worth.

John sets us on the right path:

In the beginning was the Word, and the Word was with God, and the Word was God.

The same was in the beginning with God.

All things were made by him; and without him was not any thing made that was made. [John 1:1–3]

The Savior is the Word. Let us consider whether our words are worthy of Him.

Words are among the most marvelous gifts we have as human beings. Words are tools used by God to build the necessary framework to lift us from our mortal existence and carry us back to His presence. He uses words for making and keeping binding commitments. The difference between an eternal marriage and a marriage of degrading cohabitation is a few words.

This is made clear in one of the most loved films of the BYU community, past and present:

BUTTERCUP:

Oh, Westley, will you ever forgive me?

WESTLEY:

What bideous sin have you committed lately?

BUTTERCUP:

I got married. I didn’t want to. It all happened so fast.

WESTLEY:

Never happened.

BUTTERCUP:

What?

WESTLEY:

Never happened.

BUTTERCUP:

But it did. I was there. This old man said “man and wife.”

WESTLEY:

Did you say “I do”?

BUTTERCUP:

Uh, no. We sort of skipped that part.

WESTLEY:

Then you’re not married. If you didn’t say it, you didn’t do it.

[From the movie script for *The Princess Bride*, http://www.krug.org/scripts/princess_bride.html]



Our words in the marriage vows, and those of the priesthood-holding sealer who binds us together for eternity, are not symbols of the marriage. Words are the mechanism for making the vows and for our Father's accepting our commitment and granting us the opportunity to extend those vows into eternity. The vows are the wedding—the binding.

As we bind ourselves to our eternal companions through vows, we also bind ourselves to God. We are members of a covenant church. We enter into covenants with our Father in Heaven, as did Abraham, his son, and his grandson. Our Father makes great promises to us through those covenants: eternal life, eternal marriage, blessings poured from the windows of heaven. "I, the Lord, am bound when ye do what I say; but when ye do not what I say, ye have no promise" (D&C 82:10).

The individual covenants we make are set out in specific sacred words. The baptism prayer, the sacrament prayer, and portions of the prayer of confirmation use precise words.

Why must a baptism or sacrament prayer, a sealing prayer, or any other prayer or blessing in the temple be witnessed and spoken exactly as it is set out in scripture or otherwise revealed? Because the exact pattern of those words is a sacred act—an ordinance—an exercise of the priesthood of God. If you didn't say it, you didn't do it.

Used in the context of our relationship with God, words are real, and their power is real. Repentance can be real and sincere, but our acceptance of the Atonement is not sufficient if we only have a change of heart. We must also be baptized. The act, and the words of the prayer, are more than symbols. They effect real change. The acceptance and understanding of that change is part of the act of repentance and of our preparation for baptism. Contemplating those vows enables us to test the reality of our commitment to repentance, to a forsaking of past sins and a covenant to take upon ourselves the name of Jesus Christ—more words. More words that are the acts we cherish and revere (see D&C 76:50–54).

As a lawyer, I understand that. Mutually enforceable promises to act or pay constitute a contract. One relying upon the representations or promises of another can legally bind the promisor. The promisor cannot change his mind or say, "King's X, I didn't really mean it." The time of agreement may alter tax liabilities or the validity of the agreement itself. The parties cannot lawfully misrecord the time or date when it is an element of the agreement. The law views those words as binding, just as our Father does in the spiritual context.

For this reason I am always shocked when I learn of a law student or lawyer who blithely alters the facts recited in an agreement. He has not made a legally valid change but has committed fraud—deception with intent to achieve a benefit to which the client is not legally entitled. If caught, he will suffer the appropriate penalties—think Enron. If not, he remains at risk of discovery. The false words may fool some people, but they do not make an invalid document valid. If we lie in a document, can we expect the courts to honor the document?

However, we are mortal and can be deceived. It is possible that the liar can cover up a lie, and it will live so long that it is accepted as truth and the law does not allow the question to be reopened. That does not make it true, but it takes the lie beyond the power of the court to undo its consequences. The term for this is *statute of limitations*. It means a limitation of action: the services of the courts are no longer available to a petitioner who seeks to overturn a result based on the lie. The law provides for a limitation of actions because otherwise there would be no certainty in our temporal lives. Contracts, deeds, and other transactions would never be final. It would be impossible for us to have certainty in our temporal affairs.

Temporal affairs are reciprocal of eternal ones. In an eternal world, with an immortal Father and omniscient judge, we cannot lie. We can say we have repented and been baptized, but if we do not in our hearts make the covenants that go with the words, can we expect our Father to honor them? We can fool ourselves, our bishops, our mission presidents, and our spouses, but we cannot lie to our judge, our Father. It is not an accident that Satan is known as the father of lies:

The
difference
between
an eternal marriage
and a marriage
of degrading cohabitation
is a few
words.

**FIGHTING WORDS
BY THEIR VERY UTTERANCE
INCITE AN IMMEDIATE BREACH
OF THE PEACE.**

And because he had fallen from heaven, and had become miserable forever, he sought also the misery of all mankind. Wherefore, he said unto Eve, yea, even that old serpent, who is the devil, who is the father of all lies, wherefore he said: Partake of the forbidden fruit, and ye shall not die, but ye shall be as God, knowing good and evil. [2 Nephi 2:18]

On the other hand, our Father is the Father of Truth.

I have a personal vision, not a comfortable one, of the Judgment. I think the book that is the record of each life is the heart and mind of the person. Judgment is ultimately a stripping away of all lies. We are faced with our own selves, the absence of all deceit, excuse, rationalization, or obfuscation. Further, we know that our Father and our Savior have a perfect knowledge of us, as we now are. They love us anyway. However, they also know the exact degree of our sin, our repentance, and our acceptance of the proffered Atonement. Stripped bare of all pretense, we are not so much judged as we come to fully understand the justice, the mercy, and the inevitability of our ultimate fate.

Until that day we must live with an imperfect knowledge of the truth of words. So I will turn from the perfection of words and understanding to which we come in the next life to the more difficult, even trying confusion we bring to each other as we use and misuse words each day.

I want to talk about the mundane uses of words for the rest of our time together because their consequences are not mundane. I think these uses are the ones that get us into the most difficulty. In our daily speech we use words casually. We toss them out, sometimes careless of their effect. We drum up a phrase for its immediate impact without thinking of its long-term consequences.

My father would not tolerate a vulgarity, much less an obscenity or profanity, to be used in the home or by his children. Once, when I was about 11, I used a word often used by my friends and classmates and also used, though not in my father's presence, by my siblings. It was a mild expletive, one that had once had a specific biological connotation, lost through millions of thoughtless repetitions. He asked, in the disappointed tone that always stirred the guilt I was carefully trying to ignore, if I was so bereft of imagination that I couldn't think of a creative



way to express myself. He was disappointed if my education from my parents had left me so stunted in vocabulary that I could find nothing to say of greater grace or meaning.

My parents and their siblings were pioneers. As an adult I had the occasion to read the journals and autobiographies of other late 19th- and early 20th-century settlers as well as historical novels, including my favorite, *The Virginian*, which tells the story, thinly disguised, of the in-laws and grandparents of some of my dearest friends. Most of these men and women had a few years of education in a local schoolhouse or home. They lacked degrees or academic distinction. However, it was central to their self-definition that they expressed themselves well. Their stories were works of art. Their descriptions were careful and precise. In *The Virginian* the protagonist brings a train car full of cowboys on the verge of rebellion into happy, though abashed obedience by selling them as truth a tall tale of such magnificence that they bow to his obvious superiority. (See Owen Wister, *The Virginian: A Horseman of the Plains*, <http://xroads.virginia.edu/~HYPER/wister/cht6.html>.)

My relatives of the same generation viewed speech and especially storytelling as entertainment, art, and a way to build and maintain subtle and nuanced relationships of love and respect within the family and the community. Many of the stories were funny, many tender, but the art of well-chosen language was a hallmark of intelligence and leadership. Or, as Elder Dallin H. Oaks said:

A speaker who mounds profanity or vulgarity to punctuate or emphasize speech confesses inadequacy in his or her own language skills. Properly used, modern languages require no such artificial boosters. ["Reverent and Clean," *Ensign*, May 1986, 51]

I compare that with the mindless gutter language that washes over us as we watch television, movies, or walk down the street. I loved the movie *Apollo 13* but was interested, and relieved, when I read an interview of one of the astronauts from that amazing flight. Commenting on the film, he said it was pretty accurate except that no one on the crew swore, there was no antagonism between crew members, and they did not drink alcohol while in training. Apparently the makers of the



movie felt the need to use profanity to pump some energy into dialog that lacked, in their minds, vigor or interest—sort of like adding too much salt to watery soup to cover the absence of more nutritious ingredients. Surely this story had enough body that it did not require those extra few handfuls of salt.

The law has a term, *fighting words*, for insults so foul that the victim of such insults is entitled to fight back. In the words of one court, "[Fighting words] by their very utterance provoke a swift physical retaliation and incite an immediate breach of the peace" (*Skelton v. City of Birmingham*, 342 So. 2d 933, 936-37 [Ala. Crim. App.], remanded on other grounds, 342 So.2d 937 [Ala. 1976]). The words themselves constitute assaults. If you are interested in what words those might be, listen



Constance K. Lundberg

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Professor Lundberg has served with American Inns of Court for 12 years and has been a director of organizations ranging from the Utah Academic Library Consortium to the Utah Opera. Prior to joining BYU she was an associate, then partner, at Parsons, Behle and Latimer in Salt Lake City. The recipient of a BA degree from Arizona State University, Lundberg earned a JD at the University of Utah in 1972 and an MLIS at Brigham Young University in 1993.

An accomplished musician, Lundberg is also known for her appreciation of fine art, serving as the quasicurator of the Law School's art collection. She married Boyd Erickson, now deceased, and has a son, Phillip.

to some of the more popular rap recordings. I have been dismayed to read in legal literature that some scholars think these words have become so common in general public discourse that, except for one or two racial epithets, there may no longer be words that meet the legal standard of fighting words. I disagree and would like to share two experiences I had this year.

My son is a basketball player. In the last seven years I have seen perhaps 120 high school or Junior Jazz basketball games. I have also heard perhaps every fighting word in the book on the lips of players, coaches, or referees. It has become an accepted strategy for some players to subject their opponents to a stream of foul language to upset them, put them off their game, or (best of all, it seems) to goad them into fouling. In one game, one of my son's teammates was subjected to a continuing verbal assault from a referee, who told the boy he intended to make him behave so badly that the ref could throw him out of the game.

An even sadder instance involved a different ballplayer at a different game. A boy about 10 years old was sitting on the floor underneath the home team's basket, yelling every obscenity and profanity the mind could recall at one of our boys who was

waiting to rebound.

Here was a 16-year-old basketball player trying to stay calm and focused being riveted by a barrage of filth, his teammates yelling his name repeatedly to refocus him on the game. Parents, teachers, principals, coaches, and referees took it for granted. What does it say when we consider foul language to be an acceptable strategy in school sports competitions?

I love the grace, strength, and skill of basketball. But sitting in the stands I sometimes find my heart racing and my blood pressure shooting up as if I were being mugged when I am surrounded by booing, shouting, disrespect, and harassment of players and referees. If we really love the game, as opposed to a gladiatorial contest, we don't want garbage. In too many sports events, and in television shows like *The Weakest Link* and *American Idol*, the real sport is the abuse.

The referee should have known better. The parents, teachers, and players should have known better. They were not witless or helpless. They made choices about the language they used and tolerated. Those choices tell us much about them—and ourselves when in the same position.

Elder Charles Didier taught us to remember:

Words are a form of personal expression. They differentiate us as well as fingerprints do. They reflect

what kind of person we are, and tell of our background, and depict our way of life. They describe our thinking as well as our inner feelings. ["Language: A Divine Way of Communicating," *Ensign*, November 1979, 25]

Elder Didier went on to say:

Language is of divine origin. Only man speaks (and women do even better), and he does so because of the purpose for which he was created. Let us listen to Paul when he said: "Though I speak with the tongues of men and of angels, and have not charity, I am become as sounding brass, or a tinkling cymbal" (1 Cor. 13:1). Anacharsis, when asked what was the best part of man, answered: "The tongue." When asked what was the worst, the answer was the same: "The tongue."

"Therewith bless we God, even the Father; and therewith curse we men, which are made after the similitude of God.

"Out of the same mouth proceedeth blessing and cursing. My brethren, these things ought not so to be.

"Doth a fountain send forth at the same place sweet water and bitter?"

"Can the fig tree, my brethren, bear olive berries? either a vine, figs? so can no fountain both yield salt water and fresh" (James 3:9–12). [Didier, "Language," 25]

Words can be healing balm or gasoline on a fire in disputes with neighbors, friends, or colleagues. Television and movies create a tolerance for overblown emotion. Where once we sought the subtle or understated, now we often feel the need to heat up our vocabulary. Consider these different ways to make the same point:

1 "I don't remember things that way" or "You are lying." Or, my personal favorite, "You are a fraudulent malfessor!"

2 "Let's think together to try to solve this problem" or "That's dumb. Let me do it. I know the right way."

3 Or, turning back to my basketball stories, consider the parent of one of my son's teammates, who proposed that our parent rooting core quit yelling negative comments to referees who were doing a poor job but praise them when they did well and encourage our boys on in the face of adversity. It seems to be making an impact in the tenor of games and has even perhaps reduced, though it has not stopped, the foul language.

When we attack people with whom we disagree, we injure or even end our ability to resolve disputes. Each time we raise the temperature in the discourse it is harder to reconcile differences. We raise a barrier of hate and anger. Elder Richard L. Evans counseled: “We are in a sense as much responsible for what we do to others with our words as we could be with weapons. In a sense, you can hit a man with words—‘words as hard as cannon balls’ as [Ralph Waldo] Emerson said it [Self-Reliance]” (“The Spoken Word: ‘Words as Hard as Cannon Balls,’” *New Era*, December 1971, 34).

Words can be powerful in a positive way. Think of Alma’s experience with the Zoramites:

And now, as the preaching of the word had a great tendency to lead the people to do that which was just—yea, it had had more powerful effect upon the minds of the people than the sword, or anything else, which had happened unto them—therefore Alma thought it was expedient that they should try the virtue of the word of God. [Alma 31:5]

The Apostle Paul admonished us: “But now ye also put off all these; anger, wrath, malice, blasphemy, filthy communication out of your mouth” (Colossians 3:8).

Tenderness and loving speech are more important in families than anywhere else. My mother and I were at a dinner with a large family that was, for the most part, loving. There was one particularly attractive young couple. Their three beautiful children were talented and bright. The parents were successful in the community and apparently had everything. Later we were talking, and Mother grieved over the couple because of the pain in their relationship. I questioned her judgment. They were joking, laughing—the life of the party. She was not fooled by the jokes. Each one had an edge, she said. Every funny comment by one put the other in a bad light. Two years later they were divorced. Mother saw, as I did not, that cutting, hurtful words are not ameliorated by humor—just disguised to the inattentive.

Loyalty in a family means that we are loving in word. Again, Elder Didier gives great guidance:

Language is divine. Some may know this but do not realize its implications in their daily family

life. Love at home starts with loving language. This need is so important that, without loving words, some become mentally unbalanced, others emotionally disturbed, and some may even die. No society can survive after its family life has deteriorated, and this deterioration has always started with one word. [Didier, “Language,” 26]

And it is always a hurtful word.

Studies of couples who stay married for 30 or more years show that they are kind to each other. Their criticisms, when they come, are couched as exceptions in a nest of praise and love. I did a Google search on the term *lasting marriage*. The results? There were over a quarter of a million entries. I did not tally all the suggestions. I did page through the first 50 or so. The overriding theme was to be loving, resolve conflict, and be respectful of each other.

Elder Lynn G. Robbins wrote of Satan’s efforts to destroy families:

*He damages and often destroys families within the walls of their own homes. His strategy is to stir up anger between family members. Satan is the “father of contention, and he stirreth up the hearts of men to contend with anger, one with another” (3 Ne. 11:29; emphasis added). The verb stir sounds like a recipe for disaster: Put tempers on medium heat, stir in a few choice words, and bring to a boil; continue stirring until thick; cool off; let feelings chill for several days; serve cold; lots of leftovers. [“Agency and Anger,” *Ensign*, May 1998, 80; emphasis in original]*

Finally, as a mother, grandmother, great-grandmother, and Primary president, I must talk a bit about words that heal children and words that wound them. Children are tender. They want to please. They want to do right. Sometimes they do not know how to do so, but they will strive to do right unless they are beaten down. We have all lost our temper on occasion with a particularly persistent child. But remember the Savior’s love for them. His admonition, repeatedly, is that we should seek to be like them.

But whoso shall offend one of these little ones which believe in me, it were better for him that a millstone were banged about his neck, and that he were drowned in the depth of the sea. [Matthew 18:6]

A child may, and will, make mistakes. She may do bad things, but she is not bad. Psychological studies suggest that a child’s brain is forming and reforming, building connections and synapses. When we discipline or reprimand a child, we are truly building that child. If we teach a child she is bad, we teach her to be bad. If we teach a child she is good, she strives to become good.

My son Philip persisted in asking me, when he was a child, if he was perfect. I had a rare moment of insight and knew that either a yes or no answer had pitfalls. If he was perfect, there was no room for growth. But he was clearly telling me he wanted and needed approval. I hit upon a compromise: “You are a perfect five-year-old.” This was not exactly what he wanted to hear. What was a perfect five-year-old? It gave us a chance to talk about all the things he did well, how he was loved by his heavenly and earthly parents, and how he could grow to be a wonderful adult and return to his heavenly parents—not just a perfect five-year-old but one day perfected. Although he wanted another answer, he found mine acceptable. Through the years he has asked me if he is perfect. At about the age of 12 he came to accept my answer. “You are a perfect 12-year-old.” Over time he has developed an understanding of the doctrine of eternal progression. He still desires to be better. He knows he has ample room to grow and improve, though sometimes his lack of perfection frustrates him as it did when he was five. But he accepts the process.

President David O. McKay counseled:

Three influences in home life awaken reverence in children and contribute to its development in their souls. These are: first, firm but Gentle Guidance; second, Courtesy shown by parents to each other, and to children; and third, Prayer in which children participate. [CR, October 1956, 6–7; emphasis in original]

All of these three influences involve words.

Everything given to us by our Father is given for our eternal salvation. However, any gift can be abused or turned to evil purposes. Words, the power of language, are among the greatest gifts. I pray we can use words for our edification and bless the lives of others, and I do so in the sacred name of Jesus Christ, amen.



THE
TRIAL
OF
CHRIST

BY ELDER CREE-L KOFFORD

I invite you to investigate
with me a trial of tremendous significance that occurred in the
meridian of time and about which one noted authority wrote,
“The pages of human history present no stronger case of judicial
murder than the trial and crucifixion of Jesus of Nazareth.”

It is my hope that examination of this event will help you to come closer to our Heavenly Father and His Son Jesus Christ.

We all know the great miracles the Savior performed, but most of us have trouble knowing and understanding the Savior when He walked on water or raised the dead to life because we have never done these things. Nor do we fully understand how He bled at every pore or how He took our collective sins upon His shoulders. But as I glimpse Jesus in an environment (legal) that I thoroughly understand, I am able to carry that into an area that I do not understand.

The trial of Christ occurred while Rome controlled the land of Palestine. Rome was represented at the trial by two men: Pilate and Herod. Pilate was the man to whom Jesus would ultimately be taken for the final phase of the trial. He was a man who had earned the enmity of the Jews: he flaunted the image of the Roman emperor in sacred places of the Jews and usurped money from the temple treasury. At one time they petitioned Rome to have him removed. Pilate was both a powerful and an impotent ruler. If his subjects rose in rebellion against him, he would be recalled, and he knew it. That will become important.

meet him is 70 years old. He had been the chief priest—a position like the chief justice of the Supreme Court, the speaker of the House, the president pro temp of the Senate, and the president of the United States all rolled into one. He was absolutely unscrupulous and unprincipled.

Caiaphas is the other name to remember. Caiaphas was Annas' son-in-law. He was of the same disposition as Annas, but not nearly as smart. At this particular time, he was the chief priest.

The trial was conducted before the Great Sanhedrin, a body of 72 men who sat only in Jerusalem. To be a member of the Great Sanhedrin was an honor. Membership required that a man be Hebrew, speak multiple languages, and be upstanding in the community. He had to be honest and without guile. You will see that what was supposed to be and what really was were two different things.

The evidentiary and procedural rules used in the Great Sanhedrin were unusual by today's standards. First of all, there were no lawyers, no advocates, and no prosecuting attorneys. An indictment was made when two witnesses gave the same incriminating evidence. To be a witness you had to

One interesting application of Jewish law was that if you voted for acquittal the first day, you could not reverse your vote and vote for conviction the second day. However, you could do the opposite.

Another requirement specified that between the first and second days of the trial, the members were supposed to talk about the case while walking home. They were to assemble in small groups and further discuss the case. They were to dine lightly and pray and ponder the situation and again meet just before bed to discuss the case once again.

The law and the facts that applied in the trial of Christ came from two sources: the Pentateuch (the first five books of the Old Testament) and the Talmud. The Talmud consists of the Mishna, which is the written code of the Hebrews, and the Gemara, which was the unwritten code eventually reduced to writing. Today we would describe the Gemara as *corpus juris*—an encyclopedia of Jewish law. To give you some idea of size, one writer estimates that if it were reduced to English, the Gemara would consist of 400 volumes, each volume having 360 pages.

The facts of the trial of Christ all come from one fundamental source: the four Gospels of the New Testament. Factually, that's all we have upon which to base our examination.

With this background in place, let us now go to the trial itself. Christ had left the upper room. The sacrament of the Last Supper had been taken, the washing of feet had been conducted, and Judas had been told to do that which he was to do quickly and had left, as one writer said, to perform his nefarious activity. Christ had taken the 11 disciples who were left and had journeyed out of Jerusalem. The city gates, normally closed, were left open during the Passover to allow ingress and egress by the vast crowd gathered at Jerusalem for the festivities. He went down over the small creek of Cedron and up the hill to the Garden of Gethsemane. What transpired in that sacred place changed the history of all mankind and brought hope to those who before had held none.

Emerging from the Garden, Christ said to his disciples, "Sleep on now, and take your rest: behold, the hour is at hand, and the Son of man is betrayed into the hands of sinners" (Matthew 26:45). As he said that a

THIS SPIRIT IN THE LAW FIRESIDE ADDRESS WAS PRESENTED AT
THE J. REUBEN CLARK LAW SCHOOL ON MARCH 23, 2003.

The other man you need to know about is Herod, the tetrarch of Galilee; he, too, was hated by the people. It was his father, Herod the Great, who had caused the slaughter of all children less than two years of age when Christ was born. Herod is the only person in recorded history to see Christ face-to-face and never hear His voice.

As a general rule, Rome was very tolerant of local citizens governing themselves. However, its leaders reserved for themselves the right to pass the death sentence. So, at the time of which we are speaking, Jews could not pass the death penalty; all they could do was refer such a case to the Romans.

You also need to know a little bit about the Jews. Two Jewish leaders became especially important during those fateful hours. The first was Annas, who at the time we

be Hebrew. You could not be a woman, nor could you be immoral. In order for a person to be a witness, they had to be an eyewitness to the entire act on which the charge was based—which is different from the permissible partial witness system we use today.

As you see, the Sanhedrin operated under an interesting set of rules. Procedurally they had a set regimen that had jurisdictional implications. At the beginning of each day, the morning sacrifice was offered. The judges would then assemble, witnesses were examined, and debate and balloting occurred. At that point in a criminal case of capital nature (wherein the death penalty could be imposed), it was required that the trial be recessed. The judges all went home. The next morning they met again, and after the morning sacrifice they revoted.

band or cohort came through the gates of Jerusalem. Though some distance away, the light from the torches glistened upon the shields and swords of the Roman legions that were with the Jews. Christ stood calmly and waited for them to come.

Judas came forward and, with betrayal in his heart and a smile on his lips, kissed the Savior on the cheek, saying, "Hail, master" (v. 49). With kingly bearing, the Savior responded, "Betrayest thou the Son of man with a kiss?" (Luke 22:48). The signal had been given, the object of their conspiracy identified.

In spite of this, the hardened soldiers stood transfixed. Perhaps they wondered: "Can He really cause the blind to see? Can He really raise the dead to life? Can He really perform miracles?" With their superstitious nature they must have been concerned about these things, for they did not make a move toward Christ.

Christ's voice rang into the night, "Whom seek ye?" (John 18:4). A voice from the crowd answered, "Jesus of Nazareth." He said, "I am he" (v. 5). Several fell to the ground, others stepped back, and there was no effort to advance. The second time His voice rang out with clarity: "Whom seek ye?" Again the answer came: "Jesus of Nazareth" (v. 7). "I have told you that I am he: if therefore ye seek me, let these go their way" (v. 8).

The soldiers finally mustered their courage, came forward, bound an obedient and submissive Christ, and led Him away, but not before Peter pulled his sword and struck the ear from Malchus, the servant of the chief priest, not before His followers had some idea of the awful events they would see on this fateful night.

Eventually Christ was sent bound to Caiaphas, the chief priest. It was there, I believe, that the formal trial of Christ began. Caiaphas was in the assembly of the Sanhedrin. Where it met or how many there were I do not know. But there is no doubt in my mind that there was a Great Sanhedrin, that it met on that night, and that it exercised unholy jurisdiction over Christ in furtherance of its own conspiracy.

As we examine the actual trial, keep in mind that there was no indictment. There was no reading of a charge. There was simply the calling of witnesses. The scriptures say that the Sanhedrin set about to find false wit-



ELDER CREE-L KOFFORD, an emeritus member of the

Seventy, most recently served as president of the Utah North Area of The Church of Jesus Christ of Latter-day Saints. Elder Kofford's prior assignments include president of the Asia Area and president of the North America Northeast Area, where he was serving when called to the First Quorum of the Seventy in April 1994. He was serving as president of the New York New York Mission when called to the Second Quorum of the Seventy in April 1991.

Elder Kofford earned a bachelor's degree from the University of Utah (1956) and a law degree from the University of Southern California (1961). A trial lawyer, he had a private law practice in southern California when called to full-time Church service.

nesses who would bear testimony against the Savior. Witness after witness came, but no two witnesses agreed. Finally two came, one of whom said, “This fellow said, I am able to destroy the temple of God, and to build it in three days” (Matthew 26:61). The second witness reported hearing Christ say, “I will destroy this temple that is made with hands, and within three days I will build another made without hands” (Mark 14:58). Note that one said, “I am able,” and the other said, “I will.” The disparity in the testimony needs no comment. That was the best Caiaphas could do. It was early in the morning, and the feast day was coming; they were going to have to go with whatever testimony they had.

At this point Caiaphas turned to Christ—who was standing quietly, listening to the charade—and uttered the first words recorded in the trial transcript: “Answerest thou nothing? what is it which these witness against thee?” (Matthew 26:62). To this question Christ responded, “In secret have I said nothing. Why asketh thou me? ask them which heard me, what I have said unto them” (John 18:20–21). At that moment a Roman standing next to the Savior smote Him across the face, to which the Son of man replied, “Why smitest thou me?” (v. 23).

The situation had not gone well for Caiaphas: the two witnesses were weak, and he knew it; the testimony was weak, and he knew that. In a moment of desperation, Caiaphas rose from his judicial bench, rent his judicial robe, and said in a loud, perhaps profound voice, “I adjure thee by the living God, that thou tell us whether thou be the Christ, the Son of God” (Matthew 26:63).

Christ’s answer was, “Thou hast said” (v. 64), meaning, “I am what you say.” Caiaphas looked triumphantly at the Sanhedrin and said, “He hath spoken blasphemy; what further need have we of witnesses? behold, now ye have heard his blasphemy. What think ye?” (vv. 65–66). Then the Sanhedrin as one voice responded, “He is guilty of death” (v. 66). In obedience to the legal requirement that no capital case be heard in a single day, Caiaphas adjourned the Sanhedrin. Christ was given to those who were his captors. He was smitten about, spat upon, and mocked. The Sanhedrin departed for a short time and reconvened early in the morning.

As the second session began, Caiaphas, in violation of all procedural safeguards,

began with a question to the Master: “Art thou the Christ?” (Luke 22:67). The Savior responded, “If I tell you, ye will not believe: . . . nor let me go” (vv. 67–68). For the second time, Caiaphas says, “What need we any further witness? for we ourselves have heard of his own mouth” (v. 71). The Great Sanhedrin confirmed the triumph of their leader with the words “He is guilty of death” (Matthew 26:66). Thus ended the short record of the clearest case of judicial murder in the pages of history: the trial of Jesus of Nazareth before the Jews.

Caiaphas had the victory in his hands, but he didn’t have the power to kill Christ. He knew that if he went to the Romans and said, “This man claims to be God,” the Romans would have yawned and said, “No problem. We are a very liberal thinking group, we have gods for everything, and we’ll just put him on the mantle with all of our other gods.” Caiaphas knew that he couldn’t go in with that charge, so he twisted it, endeavoring to convince the Romans that Christ was guilty of treason.

Pilate then met with Jesus and asked, “Art thou the King of the Jews?” (John 18:33). Jesus answered, “Sayest thou this thing of thyself, or did others tell it thee of me?” (v. 34). Pilate’s response was, “Am I a Jew?” (v. 35). Christ said, “My kingdom is not of this world” (v. 36), and then went on to explain that He came to preach the truth. That led to Pilate’s question: “What is truth?” (v. 38).

When Pilate heard that Christ was a Galilean, he quickly sent Him to Herod, who happened to be at Jerusalem at the time. Receiving no answers from Christ, Herod clothed Him in a purple robe, placed a crown of thorns upon His head, and sent Him back to Pilate. Several times Pilate said, “I find no fault in this man,” but he ultimately turned Christ over to the mob for crucifixion.

Now let us examine the illegalities of the trial of Christ before the Jews. There are at least 12 of them.

First, the arrest of Jesus was illegal according to Jewish law not only because it was conducted at night but because it was brought about with the aid of an accomplice—by the betrayal of Judas Iscariot. Christ’s arrest, similar to those that we see today when search warrants are neglected, should have been a fatal legal flaw in the case against Jesus.

Second, we know according to the record of fact that Christ was interrogated by Caiaphas and/or Annas, who each sat alone in judgment. The law according to the Mishna states, “Be not a sole judge, for there is not a sole judge but one.” Of course, this refers to the Eternal Father. Either Caiaphas or Annas, or perhaps both, each conducted an illegal private examination—a second fatal flaw in the case against the carpenter from Nazareth.

Third, the indictment against Jesus was, in form, illegal. The Sanhedrin did not and could not originate charges; it could only investigate the charges brought before it. The chief priest and all of the council sought for a witness against Jesus to put Him to death. “For many bare false witness against him, but their witness agreed not together” (Mark 14:56). The gospel records disclose two distinct elements of illegality: the indictment was vague and the accusation was made in part by Caiaphas, who illegally questioned the witness.

Fourth, the trial was conducted at night. Several sources of law essentially say, “A capital offense can be tried during the day, but must be suspended at night.” The Old Testament—the Pentateuch recital of why the law is what it is—explains that this is because you see things more clearly in the day. So a court had no jurisdiction if it convened and acted at a time forbidden by law.

Fifth, the morning sacrifice was not offered. The law simply states that the morning sacrifice was a procedural jurisdictional necessity.

Sixth, the trial was illegal because it was conducted on the day preceding a Jewish Sabbath. There are two reasons why this day is significant. One is the requirement that a trial be stopped and adjourned for a night and started the next day. If a trial began on a day preceding a holiday, it meant that it had to conclude on the holiday, which was illegal. The other reason is that the penalty in a capital case had to immediately follow the judgment, and you could not put someone to death on a feast day or a holiday.

Seventh, the trial of Jesus concluded within just one day. Christ’s arrest occurred at one or two o’clock in the morning, and He was taken to Pilate as the morning sun broke over the horizon. The trial took place in about a six-hour period. Yet Hebrew law required that before an accused could be condemned to death, a night had to intervene.



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Eighth, the sentence of condemnation by the Sanhedrin was illegal because it was based upon Christ's uncorroborated confession. Jewish law held, "We have it as a fundamental principle of our jurisprudence that no one can bring an accusation against himself." By such principle, Christ should not have been convicted for any crime.

Ninth, the verdict of the Sanhedrin was unanimous. One writer said, "If none of the judges defend the culprit, i.e., all pronounce him guilty, having no defender in the court, the verdict of guilty was invalid and the sentence of death could not be executed." The reason behind this rule is: If you're tried and everybody in the room is against you, then there must be a conspiracy, because that many people can't all agree on one thing. There was indeed a conspiracy, and, therefore, when all voted against Christ, He should have been set free.

Tenth, the proceedings against Jesus were illegal because (1) the capital sentence was pronounced in a place forbidden by law, (2) the high priest rent his clothes, and (3) the balloting was irregular. Regarding the third point, the judges in the Sanhedrin were supposed to stand and vote one by one. Yet in the trial of Christ they spoke, the scriptures say, as one voice pronouncing, "He is guilty of death!" There was no individual voting, and, therefore, the court was deprived of jurisdiction.

Eleventh, members of the Great Sanhedrin were legally disqualified to try Jesus. As mentioned earlier, they were supposed to be men of integrity; they were supposed to be without guile toward the prisoner. In other words, they were supposed to be impartial, but they were not.

Twelfth, the condemnation of Jesus was illegal because the merits of the defense were not considered. The law required that they should "enquire, and make search, and ask diligently" (Deuteronomy 13:14). They did not. The body of documentary (scriptural) and eyewitness testimony supporting the claim that Christ was in fact the Christ, the Son of God, is both substantial and compelling. Failure to investigate such testimony constituted judicial error of a fatal nature.

So ends our glimpse into the most infamous trial in the history of the world. Corrupt jurors, perjured testimony, judicial conspiracy, and more were present that night almost two thousand years ago. The innocent, sinless Son of God was found guilty of claiming to be the Son of God. The charge of blasphemy before the Jews was deftly turned into the charge of treason before the Romans. Justice was trampled that night. We have called it a trial; we could as well have called it judicial murder.

Could Christ have stopped the process? Without a doubt. After all, He had the power to call down legions of angels. With a

word the powers of heaven could have been summoned, the conspirators dispatched, and Christ set free. But how then could the purpose for which He came to earth have been brought to pass?

The submissive Christ allowed the hateful Sanhedrin, the priest-driven mobs, and even the conquering Romans to carry out their evil designs—all so that the Atonement might be wrought and through it the gift of life everlasting and the hope of eternal life be given to each of us.

As one trained as an advocate before the courts of men, I am filled with love, gratitude, and admiration for Him who will stand as my Advocate before the courts of God. He is the Savior of the world, our Exemplar, our Brother, and our Advocate with the Father.

To you who will one day sit in the courtrooms of the world, it is my prayer that you will never stand in a courtroom without remembering, for just a moment, that night some two thousand years ago when Christ stood in the courtroom from which came eternal life.

ART CREDITS

Carl Heinrich Bloch: page 10, *Christ with a Crown of Thorns* (1882); page 13, *The Crucifixion* (1884); page 15, *The Entombment* (1880); courtesy of Brigham Young University Museum of Art. All rights reserved.

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by President Cecil O. Samuelson

nal philosophy of professionalism

In his first public speech since the announcement of his presidency of Brigham Young University on March 18, Elder Cecil O. Samuelson addressed the J. Reuben Clark Law Society at a luncheon in the Joseph Smith Building in Salt Lake City on April 7, 2003.

W

hile I appreciate the invitation to be with you, I admit to being somewhat intimidated. The last time I appeared before so many lawyers was many years ago as a then young medical school dean. A previous faculty member had been accused of research fraud, and I was “invited” to a deposition. Each of the several universities involved had its own team of lawyers, and since the issue of federal funding for research was part of the inquiry, the Justice Department also was there in force. Even though I was frankly irritated with the alleged perpetrator, I admit that I felt sorry for him because his side seemed to have only five or six lawyers to face the hordes. • I had some good advice from my university’s counsel who was trying to prepare me for the deposition and who apparently had had uneven prior experiences with the testimony of

physicians. In trying to assist me, he took a rather long time to give basically the same advice that President Franklin Roosevelt gave to his son James when counsel was sought concerning a speaking engagement: "Be sincere, be brief, and be seated." I will try to do all three.

I must also confess that I am not looking for speaking engagements at this time of transition in my life. I'll not speak about the matters most pressing on my mind today, because I am not yet the president of BYU and also do not consider myself yet well enough informed to represent the institution with the distinction it deserves. Hopefully, that will be possible as time passes.

The primary reason I accepted Oscar W. McConkie Jr.'s kind invitation is that I have owed him a great deal for many years. I have never been his personal client, but he has been my mentor and friend since the days over three decades years ago when he was my stake president, and I had the privilege of serving as president of an elders quorum under his direction. His influence was profound and persistent and, in fact, has contributed to much of what I wish to discuss with you today. An interesting dimension is that while serving under his direct leadership, I appreciated only in part the things that have been the most helpful. Much has come in the years that have passed, in spite of sporadic personal contact, because the lessons of life and the passage of time have amplified principles he modeled and taught at a time when they could not be fully valued without the context of later experience.

I fear that the title given for my remarks sounds more pretentious than is intended. The real reason I chose it was that my secretary, and Oscar's, applied some pressure to provide a title when I was not yet at all prepared. I looked for something that would cover anything that I decided to say and viewed the advertised topic as appropriately vague for the circumstances. Please notice that I said *a philosophy*, not *the philosophy*. Mine has developed over time and is still a work in progress, I suppose.

Merriam-Webster's dictionary defines professionalism as "the conduct, aims, or qualities that characterize or mark a profession or a professional person" (Tenth Edition). Conduct, aims, and qualities all seem fairly straightforward, and yet each must be viewed

or considered in the context of not only what a particular profession—such as the law—means to the public generally but also what the particular profession means to the individual member or practitioner.

As a young man making the decision to pursue medicine as a career and profession, I knew relatively little about the realities and nuances of the life of a physician, and yet the notions of professionalism seemed straightforward. Over time, as my knowledge and experience increased, the ideals of professionalism continued to seem clear, but the applications invariably became more complicated. It was Grace Williams who said, "We learn from experience. A man never wakes up his second baby just to see it smile."

Perhaps a couple of examples that seem to me to have clear analogies with the practice of law may be helpful.

In my training, particularly as a resident and postdoctoral fellow at Duke University, I met some teachers and mentors who were terribly impressive and wonderful examples of the art and practice of medicine. Some of their influences and philosophical imprinting remain with me even now. All that they did professionally was worthy of emulation, and yet I was able to identify values they held to firmly that created dissonance with some of my own dearest standards. One that was dramatic then and is increasingly so now was the obvious relegation of their families to a distant second place in their hierarchy of important things. Because of what I had learned from my parents, other influentials like President McConkie, and my wife, Sharon—as well as my own experiences—I was able to recognize the differences in our philosophies, and this perception also helped me in making career decisions that some others, including important mentors, have thought to be foolish or unfortunate. (By the way, some of my best friends, especially those not of the LDS faith, believe that my most recent career change is a real whopper!)

Over the years as I have followed the courses of the lives and careers of some who I have admired and appreciated, I have been both glad with the major choices I have made (even in the face of some rather silly mistakes) and sad at the disasters that I have seen in the lives and families of some dear friends who have reaped the consequences of their priori-

ties. Please understand that I do not hold up my family or my behaviors to be commendable or exemplary but only that I am increasingly and profoundly grateful that I have understood that there was and is much more to professionalism than the laboratory, courtroom, or classroom.

A second example has to do with a later professional assignment. I was asked to chair the Council on Continuing Medical Education for the American Medical Association. The activities of this council had to do with accrediting formal learning opportunities for practicing physicians. You may be aware that for a time there was a fair amount of concern raised in the media that continuing education for physicians really meant continuing vacations in exotic places.

As we reviewed standards for these courses, it became apparent that some of our colleagues met the letter of the law while avoiding the spirit. That is, a psychiatrist might attend a plastic surgery course in Hawaii and earn the required educational credits while not learning anything that applied to his actual practice. I know you are shocked, and such a thing would never occur with attorneys, but it was a small and yet significant problem in medicine. Now physicians actually need to demonstrate that the continuing education courses they take have demonstrable applicability to their individual practices to count against the requirements of licensure and certification. You might say that this could be an issue for the ethics committee. It might well be, but certainly it is a dimension of professionalism.

Having said all of the above, within the boundaries of proper professionalism lie many opportunities to personalize our approaches to our life's work. I have come to believe that the apparent separation of our public and private lives is really not possible. I am not suggesting that we mow the lawn in coat and tie. What I am suggesting—and believe with increasing intensity—is that there must be integrity and consistency in what we are and what we do. In other words, while we may perform with excellence in certain aspects of our professional responsibilities and yet have other major parts of our lives in disarray, complete or optimal professionalism requires consistency between our public and private behaviors. I suspect that most of you will agree

and consider this assertion to be consistent with the values of J. Reuben Clark Jr.

In a similar vein, I confess that while I may be showing only my age, I worry that some of the basics of professionalism are being eroded by members of the professions themselves. I won't comment on what I see happening with practitioners of the law, but I admit to being very troubled by the rather blatant advertising and competition I see today in medicine and health care that virtually everyone in the profession would have thought to be unseemly just a few short years ago.

Not that everything is bad. There are some things that are much better. In medical education today, for example, the law now mandates that a house officer in training—an intern or resident—should not work over 80 hours a week. That seems like a modest requirement to most people, but the facts are that in my day, sleep deprivation was one of the rites of passage, however dangerous to patient or even physician health. I think Thurman Wesley Arnold, an American lawyer, probably set the balance right when he said, “The principles of Washington’s farewell address are still sources of wisdom when cures for social ills are sought. The methods of Washington’s physicians, however, are no longer studied.”

Another risk of our professions that must be considered is that by virtue of the recognition society grants to various professionals, come freedoms not typically accorded to the average citizen. As attorneys you are allowed and expected to ask questions of clients and others that would be considered offensive, impertinent, or rude when asked by anyone else. I know that being officers of the court does not grant complete immunity in this area, but the general principle applies. You will be the holder of some of your client’s deepest secrets or confidences—some of which are sacred, some of which may be embarrassing, and all of which are private.

In brief, you are seen in an entirely different light than most people, the recipient of special prerogatives restricted to only a few but also carrying the tremendous responsibilities that are inextricably connected to them. We always need to remember that Jesus taught, “For . . . unto whom much is given much is required” (D&C 82:3; see also Luke 12:48). One of the heavy burdens you bear is

the need to be constantly self-monitoring and totally honest with the face you find in the mirror—your own! As talented as you are, you are not invincible. With privileges come special risks that you all recognize.

In speaking of the risks we face, President James E. Faust—who has been rightly honored by your society—once said, “Living on the edge can also mean being perilously close to the Bottomless Pit. . . . Some of you may think that you will discover your strengths and abilities by living on the edge. . . . There will always be enough risks that will come to you naturally without your having to seek them out” (*Ensign*, Nov. 1995, 46).

I applaud this counsel but also admit to feelings of optimism about life and our professions, even in the face of current troubles and challenges. In his recollections about the difficult times of the Second World War, Winston Churchill is reported to have said, “When I look back on all these worries, I remember the story of the old man who said on his deathbed that he had had a lot of trouble in his life, most of which never happened.” I myself remember hearing Paul Harvey on the radio many years ago in the midst of some crisis—the specifics of which I have long forgotten—say something like, “In times like these, it is important to remember that there have always been times like these.”

Let me conclude by offering some suggestions that I believe deserve regular review by all professionals as they hone their personal philosophies. You will recognize that these are neither new nor original.

1 Be totally honest—not only with others but with yourself.

2 Get help when you need it. Not only should you regularly seek the consultation and advice of colleagues and those more experienced than you with respect to a particular aspect of your work, but also you should be anxious to receive counsel in your family and personal lives.

3 Learn to become an even better listener than you are now. Listen carefully to your clients and those who can advise and teach you, but also listen particularly closely to those who know you best and love you most.

4 Keep learning. Much of what you have learned in law school—and what you think you know—is or will soon be obsolete.

5 Be involved in all of those things that are important to you as soon and as often as you

can. Little League ball games, piano recitals, and the like are inconvenient, but they may never come around again, and your presence or absence will likely never be forgotten. Likewise, don’t delay too long in being involved in your communities, churches, and professional organizations. You run some of the same risks that physicians face. Many years ago, Milton Mayer made a somewhat humorous but true observation when he said: “One of the things the average doctor doesn’t have time to do is catch up with the things he didn’t learn in school, and one of the things he didn’t learn in school is the nature of human society, its purpose, its history, and its needs. . . . If medicine is necessarily a mystery to the average man, nearly everything else is necessarily a mystery to the average doctor.” Be glad this doesn’t apply to lawyers!

6 Watch out for each other. No one else, no matter how concerned, really understands what your life and responsibilities are like and may not see what you see. With the tremendous privileges that are accorded to you, there are also commensurate risks you face with respect to the abuse of drugs, alcohol, client resources, and even your privileges.

7 Be loyal to your profession by doing your part to see that you follow the same standards privately that you espouse publicly.

8 Always be thinking and watching for better ways to do things. This applies not only to the technical aspects of your work but also to your human touch.

9 Take care of yourself. As strong, vigorous, accomplished, and important as you are, you still need appropriate rest, exercise, nutrition, recreation, and rejuvenation. Wise leaders have counseled that we should not run faster or farther than we have strength and means.

10 Lastly, whatever you do and wherever you do it, always make a conscious effort to leave the world a better place than you found it.

Elder Cecil O. Samuelson was serving as a member of the Presidency of the Seventy in The Church of Jesus Christ of Latter-day Saints when he was assigned to be the 12th president of Brigham Young University. A medical doctor by profession, Dr. Samuelson has served at the University of Utah as professor of medicine and dean of the School of Medicine.



My

dear friends, I am happy
to be with you on
this joyous occasion. I have a
great love for this
law school and for many of
its students in past
years. I regret that I haven't
had the opportunity to
get to know you, the graduates
of 2003, but I am sure
you have received a first-rate
legal education. I know
most of your faculty as close
friends, and I have
the highest regard for them.
They combine faith
with the best of professional
accomplishment.

The J. Reuben Clark Law School
is highly thought of
among legal educators. I began
law teaching in 1967—
a mere 36 years ago—and this
law school opened its

Avoiding Pitfalls

Illustrations by Josef Gast

by Dale A. Whitman

doors six years later, in 1973. I am reluctant to give credence to the *U.S. News* rankings of law schools, which are deeply flawed in many ways. But in general those rankings are quite accurately reflective of the reputations of law schools. Of all the law schools that have opened during my professional lifetime—and it is a large number of schools—none has a higher *U.S. News* ranking than BYU. I think it fair to say that none is better on the merits.

There are several standard law school commencement speeches. You can guess what they are: the “lifetime of learning” speech, the “let’s restore civility to the profession” speech, the “balance your professional life and your personal and family life” speech, and one of my favorites, the “why you should give money to your alma mater” speech. These are all grand speeches, but I have decided to take my remarks in a different direction today. I want to talk about how lawyers get into trouble and how you can avoid doing so.

I know that none of you expect to get into professional trouble. You think of yourselves as ethical and moral people, and you have all taken a class called “professional responsibility.” You know the rules, and you expect to live by them.

Nonetheless, you are at risk of getting into trouble—

typically in ways that have little to do with the subject matter of your professional responsibility course.

The key to staying out of trouble is to act professionally. This means something much more than simply staying within the bounds of the technical rules. At its core it means that you—and only you—must make decisions on how you will practice law and that you must sometimes make decisions that are difficult, painful, and at least in the short run, contrary to your economic self-interest.

The challenges you will face in this area will depend a great deal on whether you practice on your own or in a small firm on the one hand, or in a large, highly structured firm on the other. In many ways, these situations are as different as night and day, even though they both involve the practice of law. Let me begin with the small firm or solo practice situation. The principles for staying out of trouble here are quite simple. There are three of them:

- 1 Don't accept work you can't handle.
- 2 Communicate constantly with your clients.
- 3 Don't touch their money for your personal use.

These three principles are connected: they all involve money. If you are a solo practitioner or in a firm with one or two other lawyers, your biggest concern will be paying the bills and making a living. For a good while, economic security will seem out of your reach. As a result, every potential client who walks into your office will seem to have a slightly green tinge and to have a large dollar sign emblazoned on his or her forehead! Clients represent income, and as a result it is almost impossible to turn a client away. Unfortunately, this means that you will be tempted to accept clients whose ethics are far from your own and who intend to use you to accomplish their unworthy goals. You will be tempted to take on matters in which you have no expertise and no time to develop it. Above all, you will be tempted to take work that you simply don't have time to do.

The right response to all of these situations is simply to say no, even though saying yes will seem to have the potential for making money. It is easy to identify a lawyer who is inundated with work that she or he doesn't know how to do and doesn't have time to do. Just look on the desk for that stack of unanswered telephone messages. Lawyers in this situation practice what the psychologists call “avoidance behavior.” They don't return calls from clients because then they would have to admit that a client's pleading isn't filed or a client's contract isn't drafted or a client's deposition isn't scheduled.

This desire for more money sometimes manifests itself in an even worse and more reprehensible way—the lawyer who holds the client's funds and decides that it would be permissible to “borrow” them, just for a little while, to pay some pending expenses, without mentioning the “loan” to the client.

Sadly, this is the pathway to bar discipline and attorney malpractice actions. State bar journals are full of cases in which all of these things occurred, and someone lost his

or her license to practice law as a result. You simply must temper your desire for a good income with your desire to be a good lawyer. Sometimes the need for income must take second place. Again, the rules are simple:

- 1 Don't accept work you can't handle.
- 2 Communicate constantly with your clients.
- 3 Don't touch their money for your personal use.

Now let me turn to the big-firm lawyer. Oddly enough, the same considerations of time and money get these lawyers into trouble, but usually through a far different route. Young associates in big firms are unlikely to take their clients' funds, and they are largely protected by the firm's structure from undertaking work they can't perform. But often they are caught up in the desire to make the partners happy in order to keep a job that pays well. Let me illustrate their dilemma with three little vignettes.

Illustration 1 Your firm represents the plaintiffs in a complex construction litigation case. Discovery, which seems to have taken forever, has now been completed and the trial is only two weeks away. One day the partner to whom you report comes bouncing into the office and says enthusiastically, “I just found a terrific expert witness. This guy has impeccable credentials, and he will make mincemeat out of the defense's experts. I talked to him on the phone last night, and he is happy to appear at trial. I want you to fly to Cleveland tomorrow to meet with him and prep his testimony.”

“Fine,” you say. “I'll just phone defense counsel and let them know about this new witness.”

“Wait a minute,” says the partner. “The time for exchanging witness lists has long since passed us by. There's no need to tell the other side. If we do, they will just want to take another deposition, and that could throw the whole trial schedule off. They can just deal with him at trial.”

Illustration 2 Your firm represents a high-profile criminal defendant accused of homicide. There are no eyewitnesses, and the evidence is entirely circumstantial. One day as you return from visiting the client in jail, the partner in charge of the case asks you, “Have you prepped the testimony of the alibi wit-

This address was given at the J. Reuben Clark Law School convocation on April 24, 2003.

nesses—you know, the ones who say our client was at their house watching a football game when the crime took place?”

“Well, we have a problem with that,” you say. “The client just confessed to me this morning. I didn’t even ask him; he just blurted out that he did the killing and that it was bothering his conscience terribly. Under the circumstances, we can’t use those alibi witnesses.”

“Wait a minute,” says the partner. “You may say that you know he did it, but I don’t know that. I didn’t hear him say it, and I’m not bound by his statement. Now get busy with those alibi witnesses. We’re going to put them on the stand and get our guy an acquittal.”

Illustration 3 One morning as you are rushing out the door for the office, your spouse says, “Dear, did you remember the Beehive breakfast on Saturday? Susie is counting on your being there.”

“Oh, gosh,” you reply, “I forgot to tell you. I’m taking depositions in Atlanta on Friday, Saturday, and Sunday. I guess I’ll have to miss it. By the way, would you call Brother Archer in the Sunday School presidency and let him know that I won’t be able to teach my class this week? Oh, and honey, I’ll be late again tonight. We’re going over all the testimony in the Perkins case, since we



A graduate of Brigham Young University, Dale A. Whitman earned his law degree from Duke University in 1966. He served on the faculty of the J. Reuben Clark Law School before returning to his home state of Missouri to teach law there. A faculty member and former dean of the University of Missouri—Columbia School of Law, Whitman is the James E. Campbell Missouri Endowed Professor of Law. ○ Twenty-five years ago Whitman began serving with the Association of American Law Schools (AALS). During that time he has risen to the organization’s highest position, serving as president in 2002. He continues to devote his time and energy to its mission—improving the profession of law through

legal education. ○ A nationally recognized expert in real estate law, Whitman is also a licensed pilot, who to date has more than 500 hours of flying experience. Dale and his wife, Marge—the parents of seven daughters—look forward to serving a Church mission together upon his retirement.

have the pretrial conference tomorrow. I probably won’t be home until after 10.”

What’s happening in these three cases? One might say that it is an excess of obedience. Now obedience to the right people and the right principles is a wonderful thing. We might paraphrase Nephi: “To be obedient is good if you hearken to the counsels of God” (see 1 Nephi 1:29). But a lawyer is a professional, and professionals must be obedient to the principles of the profession to which they belong, not to other people—even the ones who sign their paychecks. These are principles that have been worked out over years—indeed, centuries—to protect the public and the integrity of the legal system. They may interfere with an attorney’s short-term gain, but they will protect his or her long-term ability to serve the public.

So what is a young lawyer to do when faced with a conflict between obedience to professional standards and obedience to a senior partner? Is it conceivable that a partner in a highly regarded law firm could actually ask a young associate to do something unethical? It is not only conceivable but fairly predictable. Some of you are going to have that experience.

Your natural reaction will be twofold: First, you’ll respond, “I’m new around here, and I don’t know much about how things are done. Maybe those professional responsibility principles that I studied in law school aren’t really followed here. I don’t have much standing to give advice about ethics to this partner, who has been practicing for 30 years.” Second, you’ll say, “If I raise a fuss about this, I’ll quickly become known as a troublemaker. At best, I will not be well thought of when it’s time to make partner. At worst, it’s goodbye to my job.”

The very essence of being a professional is that you—not a partner, not a client, not anyone else—must decide what is right. You

and only you are in charge of your professional life. “The partner made me do it” is not a viable defense. Yes, there are risks in doing the right thing, but when you do, you will have the satisfaction of knowing that you cannot be bought or bullied, that you stand for something valuable and right.

Perhaps the worst toll taken on young lawyers by big firms is the firm’s total domination of their personal lives. If you bill 2,400 hours a year, you will essentially have no life outside the firm. Do you really want to be burned out for \$150,000 per year? Do you want to know that your children are growing up without you and that your spouse is, in effect, a single parent? Do you want the relationship with your spouse—a relationship that you prize and honor, and that in many of your marriages has the blessing of eternal duration—to dwindle and atrophy while you make large sums of money? The answer, once again, is that you must do what is right, even if the firm tells you differently and even if you must risk your income and your job to do so.

These decisions are not easy ones, and they call for the blessings of the Spirit to help you make them. It is my hope and prayer that, whether in a small firm or a big one, you will have the strength and wisdom to do what is right. In the name of Jesus Christ, amen.

Jay S. Bybee

NEWEST NINTH CIRCUIT JUDGE

FOLLOWING A 74-19 SENATE CONFIRMATION VOTE, JAY S. BYBEE, '80, WAS SWORN IN AS A NINTH CIRCUIT JUDGE BY JUSTICE SANDRA DAY O'CONNOR ON MARCH 28, 2003. KNOWN AS A LEGAL SCHOLAR WHO IS "ONE OF THE FINEST CONSTITUTIONAL LAWYERS IN AMERICA," ACCORDING TO JUDGE LLOYD D. GEORGE OF THE U.S. DISTRICT COURT OF NEVADA, "JAY IS UNIVERSALLY RESPECTED FOR HIS INTELLECT, HONESTY, AND ABILITY TO ARTICULATE THE ISSUES, PLUS HE IS NOT A COMPROMISER OF PRINCIPLES."

♦ FROM HIS NEW CHAMBERS IN LAS VEGAS, NEVADA, JUDGE BYBEE RESPONDED TO THE FOLLOWING QUESTIONS FROM SCOTT CAMERON, EXECUTIVE EDITOR OF THE *CLARK MEMORANDUM*.

Question: Describe the career path that led to your appointment as a judge on the Ninth Circuit Court of Appeals.

Judge Bybee: I don't think that anyone can plan to be appointed to the federal bench. Even for the most ambitious and conspiring among us, it will always be serendipitous. But whatever closed, wayward thoughts I might have had over the past years about the possibility of someday being a judge, it had never occurred to me that I would end up on the Ninth Circuit. I was born and raised in the Ninth Circuit (born in California and raised in Nevada), but I finished high school in the Sixth (Kentucky), attended college and law school in the Tenth (at BYU), clerked in the Fourth (South Carolina), and have since lived in the D.C. (Washington), Fourth (Virginia), and Fifth (Louisiana) Circuits. My family and I moved to Nevada in 1998 so that I could take a position with the new William S. Boyd School of Law at the University of Nevada, Las Vegas. In one sense, I was going

home, but I no longer had other family there. In retrospect, the move back to Las Vegas was, of course, critical to my being appointed. Taking the position at UNLV offered other things as well: The new law school generated a lot of excitement in the legal community in Nevada, I had many good opportunities to talk with the bench and bar in Nevada, and I wrote an article on Nevada constitutional law.

There were a couple of interesting coincidences or unusual events that conspired to get me here. Perhaps the most unusual occurred in January 2003. The president had renominated me (because all nominations are returned to the president at the end of a congressional term), the Judiciary Committee was getting reorganized after the Republicans regained control of the Committee, and there were a lot of rumors about potential Democratic filibusters of some of the nominations. There was a lot in motion, and I felt anxious about the whole matter, not knowing when I

might be scheduled for a hearing, how other nominations might affect my own, and whether my nomination would yet prove controversial.

In the middle of this uncertainty, my wife, Dianna, took her annual trip with her sisters, this time to Florida. On the way home to Washington from Miami, she found herself across the aisle from Nevada Senator Harry Reid. Senator Reid, the minority whip, had previously announced his support for my nomination, but I knew the senator was under a lot of pressure, and I hadn't spoken with him in some time. Dianna introduced herself to the senator, who said, "Tell Jay that he writes too much. But tell him that Senator Ensign and I are working on it, and we will get him through." The senator's reassurances were calming to both of us. What were the chances that my wife and Senator Reid would be on the same flight from Miami to Washington? The chance meeting made enough of an impression on Senator Reid that he referred to it on the Senate floor during the debate on my nomination.

Question: What were your career aspirations upon leaving law school?

Judge Bybee: I wanted to work in Washington, D.C., and knew I wanted to work somewhere in government. In those days there were no recruiters that came to the Law School from Washington, D.C. I went to Washington at my own expense after sending out 80 to 100 inquiry letters. I remember standing in the lobby of the Hotel Washington plugging quarters into the pay phone trying to get through to the hiring partners, setting up interview times for the few days I was there. My first year out of law school I clerked for

Judge Donald Russell on the Fourth Circuit Court of Appeals. After three years of private practice, I joined the Office of Legal Policy and then the Civil Division at the Department of Justice. I later served at the White House under President George Bush as associate counsel to the president, and for the past two years, I have been the assistant attorney general for the Office of Legal Counsel at the Department of Justice.

I also hoped to teach someday. I joined the faculty at the Paul M. Hebert Law Center at Louisiana State University in 1991 and then the William S. Boyd School of Law at the University of Nevada, Las Vegas, in 1999.

The opportunities I have had have been beyond any dreams I carried out of the Law School. I was a first-year student in Monroe McKay's property class and remember the nomination process and his investiture at the Law School. I wonder how many of us that day considered what it would be like? I know I couldn't have seen the path that brought me here.

Question: Which of those things from the past will prove most helpful in your new role as a Ninth Circuit judge?

Judge Bybee: Everything is connected to everything else. My experience as assistant attorney general, my work as a law professor, and my time at the Department of Justice as an attorney on the appellate staff of the Civil Division will be extremely helpful. When it comes right down to it, though, I think what will probably be most helpful is my year as a clerk to a federal judge.

Question: Will any of your former activities have to be curtailed because of this appointment?

Judge Bybee: My first months of experience were atypical,



because I worked out of a temporary office in Washington, D.C., until school finished, and I moved my family back to Las Vegas. So I don't have a lot of experience. An appellate position can be monastic. It is just the judge and the clerks, copying illuminated manuscripts into F.3d. There are fewer opportunities for appellate judges, in contrast to trial judges, to interact with attorneys, witnesses, and other court personnel.

I am just beginning to realize how careful I have to be in conversations with attorneys, friends, and others that we don't

discuss matters that could come before the Ninth Circuit. Generally, I will have to be more circumspect than when I was teaching and freely offered my opinions to anyone who would listen.

However, I will be able to teach on a part-time basis at the William S. Boyd School of Law at UNLV—one of the few part-time things circuit court judges can still do. But in the next two years, I will focus only on the judgeship: I need to learn the business of the court. I am looking forward to the teaching function I will have with my clerks. I learned

so much during my clerkship from my judge, and I hope that I can teach my clerks as well as learn from them.

Question: What is the most influential secular book you have read? What books have you recently read?

Judge Bybee: Soren Kierkegaard's *Fear & Trembling/Sickness Unto Death* (two short books packaged together). Perhaps surprisingly, I read these just after my first year of law school. Kierkegaard's peculiar Christian existentialism really struck a deep chord; it moved me to a whole new way of thinking about faith, our rela-

tionship to God, and accepting responsibility for not only our actions but our emotions as well. I have since read a number of other books by Kierkegaard, although they are so dense that sometimes it takes me months to get through them.

The latest book I've read is the new *Harry Potter* book, and I'm working on *John Adams* by David McCullough. I've recently read Bruce Hafen's biography of Elder Maxwell and Terry Warner's *The Bonds That Make Us Free*. I will also confess to having read at the beach a number of mystery novels of no serious consequence.



Shima Baradaran Robison

2003-2004 *BYU LAW REVIEW* EDITOR

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by Edward L. Carter

As a young girl in Orumieh, Iran, Shima Baradaran Robison learned the price that good people sometimes pay for trying to better their society. When Robison was three years old, her mother went to prison for advocating democratic change in Iran. Robison and her siblings spent up to a month at a time living in the prison with their mom.

"My mother doesn't even seem like the type to have done something like that," says Robison, a third-year J. Reuben Clark Law School student who

serves as editor in chief of the 2003-2004 *BYU Law Review*. "She almost regrets it, because she almost missed our growing-up years."

After serving two years of a 10-year sentence, Robison's mother was fortuitously set free. Robison's father, a medical doctor, had performed surgery on one of Iran's religious leaders, and the leader was able to secure an early release for Robison's mother and aunt, who had also been imprisoned.

Despite the hardships, Robison's family appreciates those years. Their mother's willingness to sacrifice herself for a cause she believed in has rubbed

off on Robison and her siblings. "All of us children feel like it has been invaluable to have that kind of social vision," Robison says.

Robison's own efforts to better her society have become more focused during her time as a BYU law student. Although her father encouraged her to go to medical school, Robison originally made plans to earn a PhD in political science. After having applied to PhD programs, however, she changed her mind at the last minute and decided on law school instead.

"I came to law school partly because I was really interested in violence against women," says Robison, who spent four months in South Africa researching women's issues. "Since I got to law school, I

have become interested in other issues, like poverty and the environment. I would like to help those who are disadvantaged have access to good legal assistance."

As editor in chief, Robison invests a significant portion of her time and skills in the work of the *Law Review*. She and the 2003-2004 editorial board have established several goals they believe will define their work with the publication.

First, Robison wants to continue to publish as many student-written articles as possible. She believes this will help the *Law Review* reach out to the general student population at

BYU and elsewhere. Second, Robison wants to continue to publish professional articles from as diverse a group of authors and on as many different topics as possible. Third, she wants to continually improve communication among *Law Review* staffers and with the Law School community in general.

Robison realizes that she faces great challenges in leading the *Law Review* while continuing her own studies. She also must coordinate her busy schedule with the equally busy schedule of her husband, Jeff Robison, a third-year medical student at the University of Utah.

Nevertheless, Robison responds to the challenges with characteristic optimism and hard work. She and her husband enjoy their opportunity to learn two very different disciplines, medicine and law, together.

"It's nice for both of us to be busy," Shima Robison says. "The time we spend together is really valued. We study together. We both know that school is important and that we need to study at this time."

Eventually, Jeff and Shima plan to settle for a while in New York City to practice law and medicine. Shima already spent summers in New York City working at the American Civil Liberties Union and the law firm of Kirkland & Ellis. She is considering a judicial clerkship and, someday, law teaching.

Wherever she ends up, Robison will take with her the lessons she learned along with her mother in an Iranian prison. "My mother has established an example and goal for me to try to use my skills to help my society become better," she said. "I hope I can live up to that value with my legal education."

President of the Utah Minority Bar Association

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by Mike Johnston

Yvette Donosso Diaz, '99, recently appointed president of the Utah Minority Bar Association, is quite familiar with the challenges that minority law students and professionals face. While attending high school in Miami, Diaz sought advice from a guidance counselor about college admissions, but the counselor suggested that she abandon her college aspirations and enroll in a cosmetology course.

"She saw me as an immigrant . . . someone whose father has a third-grade education and lives on the lower economic scale. She tried to dissuade me from going to college," Diaz said. "She didn't realize that education and hard work were the staples of my home. I knew I was supposed to go to college, and my parents made numerous sacrifices to support my educational aspirations."

Ignoring the counselor's misguided advice, Diaz enrolled at Brigham Young University. Describing her experiences there as "life changing," she felt it a personal challenge to do her best, which translated into becoming an honor student.

The challenges and opportunities of undergraduate life drove Diaz to new heights as she committed herself to make a difference in her community. "I had a lot of fire, but not a lot of direction. That's when I met David Dominguez, professor at the J. Reuben Clark Law School. He convinced me that I could represent and empower my community if I could learn to think analytically instead of with emotion. He sold me on BYU Law School, and I made sure to sign up for his com-

munity lawyering class. There he taught me 'the power of one,' and that lesson continues to be a fundamental tenet of my legal practice as well as my personal life."

As president of the Utah Minority Bar Association, Diaz again feels challenged to represent her heritage with dignity. "I am the first J. Reuben Clark graduate to hold this position; thus, I feel a special need to represent my alma mater well. Being president of the UMBA has also opened doors for me to build friendships with the Utah State Bar Association. We now work together to try to meet the needs of minority lawyers and

the minority communities that need representation," Diaz said.

The need for minority attorneys in Utah has perhaps never been greater than now. In recent years Utah's minority populations have literally exploded. For example, Utah's Hispanic population has grown 150 percent in the past decade. Such growth creates a variety of challenges for the legal community.

The Utah Minority Bar Association under the direction of Yvette Diaz continues to look for ways to increase the number of attorneys who are bilingual and culturally sensitive to the issues that minority residents face.

"We need more minority associates and partners in our law firms. We need more minority judges and clerks in our courtrooms," Diaz said. "I am confident that as a bar we can begin to address some of these issues."

In upcoming months the Minority Bar Association will be inviting legal employers to support a pledge to encourage diversity awareness in legal recruitment, hiring, and training."

Diaz credits much of her success to the example, dedication, and sacrifice of her parents. She also credits her own family for being her most important priority and accomplishment. "No success would ever compensate for me failing my spouse or three beautiful children," Diaz said.



Mission President New Title for Law Alumni

Mission calls are apt to come when they are least expected. Neither Henry J. Eyring, '89, nor Steven J. Lund, '83, had the least inclination that they would be called to serve as mission presidents in 2003.



President and Sister Henry J. Eyring

President Eyring and his wife, Kelly (Japan Tokyo North Mission) have four young children, the youngest, Spencer, not yet two. Their family has always been preparing for missionary service, but they felt the call would come later. It was the same for the Lunds (Georgia Atlanta Mission). As CEO of NuSkin Corporation and with a 13-year-old daughter, Kelsey, still at home, President Lund and his wife, Kalleen, were also planning on a mission after retirement. In retrospect, both presidents see glimpses of our Father's "customized, elegant plan" and the fact that this latest turn in life's highway has been lovingly prepared.

Both mission presidents are masters at working with people. President Eyring served three years as director of the Marriott School of Management's Master of Business Administration program and more than 10 years as a consultant with Monitor Company. With regard to his Marriott School experience, he states: "My years on campus allowed me to connect with the rising generation of the Church." Inspired by the students' goodness, energy, and optimism, he was impressed by the quantum change that had occurred since his days as a joint-degree candidate at the Law School and the

Marriott School of Management. He expects that "heaven has upgraded the soldiers in its army in the intervening years" as well. While the call and its challenge to the Eyring family is somewhat daunting, they have taken comfort and confidence in blessings they have found along the way to the mission field.

President Lund's leadership over the Georgia Atlanta Mission will be facilitated by his 19 years in international business and his supervision of a large cadre of employees. However, from his own experience President Lund believes that the mission experience itself prepares missionaries to be missionaries. He attributes his success as an undergraduate and law student to the rigors of his first mission, and he expects the same gain in maturity in his missionaries. Commenting on this call, he indicated that God had not left his family alone to confront

other life experiences that seemed overwhelming at the time, and he was certain God would not do so now.

The lives of President Eyring and President Lund seem to be intertwined. President Lund had the opportunity of addressing 30,000 people at a NuSkin conference in Tokyo, where they asked him to explain why he would leave his business to serve as a mission president. To the delight of the audience, President Lund showed pictures of himself and other NuSkin executives during their missionary days. His closing request was, "If you see some of my young friends with name tags, please introduce yourselves and be friendly. I will tell the missionaries that anyone with a NuSkin tag will be their friend." Hopefully, President Lund's invitation will bear fruit in President Eyring's mission in Tokyo as well as his own in Atlanta.



President and Sister Steven J. Lund

中美司法合作项目
英语暨法律强化培训班合影
2003. 3. 4



Love in the Time of SARS

A CONVERSATION WITH LOVISA LYMAN

From mid-February to the end of April 2003, Lovisa Lyman and her husband, Don, taught English to judges and prosecutors in China's capital city, Beijing. Representing BYU's Technology-Assisted Language Learning (TALL) Department, the Lymans were joined by several ESL (English as a second language) specialists and a retired attorney/pro tem judge. The following excerpts are from a conversation with Lovisa about her experiences in China during the early months

of the SARS (severe acute respiratory syndrome) outbreak. *What type of relationship did you develop with your students?*

From their first writing assignment, which was to fill out a note card with their names and something important about themselves, I started to love them. Zhao Ying Wei, the poorest speaker in the class, went in two months from barely speaking to adequately arguing a case before a panel of judges. All of the students felt lucky to be in the program, during which time

they were released from their court duties to learn more about the American legal system. They are among the most generous, hardworking students I have ever met. The students hung on my every word. They copied everything I wrote on the board and heavily annotated their textbooks. They studied so long that one of them had to be treated for eyestrain and another for spinal pain. They agonized over every word they wrote, even though the grades would never figure in a GPA or a report to their courts.

They were extremely concerned about my safety, comfort, and well-being. I can remember them serving me with chopsticks to make sure that I got my share of the communal meal and flanking me to protect me from traffic as I walked the busy Beijing streets to the college. I remember them grinning and cheering when they found me on the Great Wall after they thought I was lost and making sure that I had a thermometer, mask, and medicine when SARS became an increasing threat.

Tell me about the lifestyle and training of the Chinese judges.

Chinese judges go where they are assigned. After graduation from an undergraduate law program, those who want to be judges must pass difficult examinations. Only the best are chosen. For each advancement up through the ranks, more tests must be taken. Judges seldom ever work as lawyers and may earn much less money than lawyers do, though some judges make up for the disparity by accepting bribes. Other judges take legitimate avenues to improve their income, such as seeking additional degrees. About a quarter of our students had master's degrees, and one had a PhD. Several taught on the side.

How did the participants react when informed that the program would end prematurely because of the SARS outbreak?

The announcement that our legal English program in Beijing would end immediately and that we would return home a month early was not entirely unwelcome. Our families were firing off worried e-mails, and our students were running the risk of not being able to travel back to their distant homes if the Chinese government further restricted travel. But at the same time, as the news was welcome, it hurt. That evening teachers and students huddled together for some farewell words in one of the study rooms at the hotel where we all lived, taking turns saying, as well as we could, what we had come to mean to one another. For me it was as though I had fallen in love with 43 people at once—and I was never one to fall in love easily.

Oh, that everyone could have such ideal students as our Chinese judges!



Kasey (Karl) Haws, '85, Paves Way for Redlands Temple

APPOINTED MAYOR AFTER BEING ELECTED TO THE REDLANDS, CALIFORNIA, CITY COUNCIL, KASEY HAWS DECIDED NOT TO SEEK A SECOND TERM. WHY? BECAUSE HE FEELS HE ACCOMPLISHED MOST OF THE GOALS HE SET HIS FIRST TERM, INCLUDING AIDING IN THE CONSTRUCTION OF A NEW LDS TEMPLE.

"I think that a person involved in politics should have a desire to benefit the public good," says Haws. He wasn't thinking much about politics until the night he came across a Redlands city council meeting on TV. He noticed that there was a three-person majority in the city council who stood behind a "zero-growth policy." They rarely approved new buildings—even a sorely needed second high school took years to get approval. As a result, Redlands almost always had a budget deficit at the end of each fiscal year.

Haws started voicing his concerns to friends in the city, and, as a result, many of them circulated the idea that he

should run for city council. He was surprised to receive calls saying, "I hear you're running. We'd love to back you. Can we have a fund raiser?" Haws had recently opened what he called a little "litigation boutique" and didn't think it feasible to run for city council. But he did, and the newspaper reported the result in one word: *Landslide*.

After two years on the city council, Haws returned to Redlands one day from a trip with his wife celebrating their 20th wedding anniversary. Checking phone messages, he was surprised to hear that several were from area newspapers asking for a comment on the announcement that the LDS Church was going to build a

Despite the city's zero-growth policy, with the help of city council member Kasey Haws, the new Redlands Temple was dedicated in September 2003.

new temple in Redlands. "I still don't think I've recovered from that moment," he says. He realized that the lives of the people of Redlands would be changed.

Haws believed from the start that the temple would be approved and built quickly, mainly because of the religious nature of the city. In fact, the city council had recently approved construction of an Islamic mosque.

On April 26, 2001, in a televised city council meeting, Kasey Haws explained that the LDS Church had announced its plans to build a temple in Redlands and that it would be a wonderful asset to the city. The community began a show of overwhelming support, creating "a momentum that has not slowed down even to this day," says Haws. The temple plans went speedily through the planning commission and were approved unanimously by the city council. Of the 250 people present at the planning commission meeting, only eight or nine were in opposition, and they had their concerns resolved on the spot. "At times I wonder why we've been so fortunate. This is exactly how you'd hope a temple would go," says Haws.

The Redlands Temple was dedicated in September 2003, a little over a year since it was announced. Haws admits he had a hand in the temple construction going so smoothly. "It was good for the Church to have someone describing this process," he says. "I must have explained 200 times who the angel Moroni is."



Melendez Rallies Support for Centro Hispano Center

Barbara Melendez, '97, president of the Centro Hispano Foundation, accepted a check for \$10,000 from Make a Difference Day and the national Points of Light Foundation in April 2003. The award recognized the work of Melendez and other Utah County volunteers who began renovations at the historic St. Francis of Assisi Catholic Church in downtown Provo, Utah, six months before. Their dream is to raise \$2 million to buy the church and transform it into Centro Hispano, a center for classes, dances, and fiestas. This money will be added to the nearly \$100,000 that has been raised so far.

The church was vacated when the Catholic parish built another facility in Orem. Talk of tearing the building down prompted representatives of the Hispanic community, neighborhood preservationists, and Utah Valley State College to band together with a new vision for the structure. The church's 16,000 square feet and five levels can accommodate hundreds of students, a commercial kitchen, a computer lab, and a gymnasium for dances and holiday festivals.

Volunteers instrumental in the renovation have been families in the area and students from Brigham Young University and the J. Reuben Clark Law School as well as Utah Valley State College. Organizers envision Centro Hispano as a magnet for the local Hispanic community.



Rick D. Nydegger Shaping Patent Law in the 21st Century

In October 2003 Rick D. Nydegger, '77, will be invested as president of the American Intellectual Property Law Association (AIPLA) after being inducted as a fellow of the AIPLA, one of 20 members to initially receive the honor.

Surprisingly, Rick never wanted to be a lawyer. Fascinated by math and science, Rick was a Sterling scholar in math from Granger High and graduated from BYU with a degree in electrical engineering and a fondness for theoretical

studies and computer programming. As an undergraduate, Rick worked for Utah Power and Light and fell under the tutelage of Jim Taylor, an electrical engineer with a law degree. Jim suggested that Rick pursue graduate studies. Taking Jim as a model, Rick registered for the LSAT and applied to the brand-new J. Reuben Clark Law School.

Engineering jobs were plentiful at the time, and Rick turned down offers from General Electric, Westinghouse, and Utah Power and Light in order to enter law school. He and his wife, Denise, decided to "stay poor" for three more years of education preparing for the future; but what that future held was unknown to the Nydeggers—patent law wasn't even on the radar screen.

With his math and science background Rick felt unprepared for law school, but after completing his first year he felt like he was "coming home." He attributes his success in school and in the practice of law to his "bulldoggedness" in work-

ing hard. For instance, Rick thought that Keith Rooker was the toughest professor he had in law school, and he took every class that Professor Rooker taught because he wanted to learn all he could from him.

Midway into his second year of law school Rick got a call from Ross Workman inviting him to interview at Ross' firm, Strong Poelman & Fox. The firm wanted to develop their patent work and was looking for attorneys with engineering backgrounds. Rick was hired as a law clerk at five dollars an hour in 1976, went with them full-time upon graduation, and was made a partner within four years.

In 1984 Rick and some patent attorneys from that firm started their own firm—Workman, Nydegger, and Jensen—with Rick working primarily in litigation for the first six or seven years. The firm, which developed a transactional base in medical device technology and software innovation, is now named Workman, Nydegger & Seeley.

Rick characterizes his experience in intellectual property law as being "nudged into new places" as the burgeoning area of law took off. That included working closely with the U.S. Patent and Trademark Office in the development of several important policy initiatives as well as drafting its widely used guidelines for the examination of software-related inventions. He has spoken and written widely on legislative and regulatory developments and is currently the chair of the National Council of Intellectual Property Law Associations and a member of the ABA Intellectual Property Law Section. Rick is also on the board of directors for the National Inventors Hall of Fame and the National Inventors Hall of Fame Foundation.

From the first Rick has looked for good people and potential in the work he chose. He is now vested in the practice of patent law, which grew from a love of math and science and the "bulldoggedness" to be the best he could be.



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Larry EchoHawk Honored at University of Utah Founders Day Dinner

Each year, to commemorate its founding in 1850, the University of Utah honors four alumni and one nonalumnus who have distinguished themselves both professionally and individually. Among the honorees for 2003 was current BYU law professor Larry EchoHawk.

A member of the Pawnee Indian Tribe, EchoHawk served two terms in the Idaho House of Representatives and became the first Native American to be elected as a state (Idaho) attorney general. He was later appointed by President Clinton to serve on the Coordinating Council on Juvenile Justice and Delinquency Prevention, chaired by the U.S. attorney general.

"The education I received at the University of Utah College of Law empowered me to achieve the American dream and to succeed in giving meaningful public service," EchoHawk said of his experience at law school.

EchoHawk, a former football player at Brigham Young University, was also the first BYU graduate to receive the NCAA's Silver Anniversary Award, presented to athletes

who have distinguished themselves in their careers and personal lives.

Law Alumni Weekend Planned

Tapping into the excitement of BYU's Homecoming weekend, alumni of the J. Reuben Clark Law School will gather together on October 9-12, 2003. A football game with Colorado State on Thursday will kick off an agenda of festivities including a golf tournament, a law alumni barbecue, and a family picnic.

An ethics CLE seminar on Friday will feature Judge Jay Bybee and former Utah Congressman Bill Orton as guest speakers. Also planned is an ethics panel moderated by BYU law professor Jim Gordon.

On Sunday alumni and their families may enjoy the

morning broadcast of "Music and the Spoken Word" at the Tabernacle on Temple Square in Salt Lake City.

JRCLS CALENDAR

2003

September 18-20
JRCLS Leadership Training
 October 4
General Conference/Reception
 October 9
Alumni Board Meetings
 October 9-11
Alumni and Friends Weekend

2004

April 2
Alumni Board Meetings
 April 3
General Conference/Reception
 May 17
Swearing-In/U.S. Supreme Court

Clark Memorandum

J. Reuben Clark Law Society

J. Reuben Clark Law School

Brigham Young University

