

Spring 2008

Clark Memorandum: Spring 2008

J. Reuben Clark Law Society

BYU Law School Alumni Association

J. Reuben Clark Law School

Follow this and additional works at: <https://digitalcommons.law.byu.edu/clarkmemorandum>

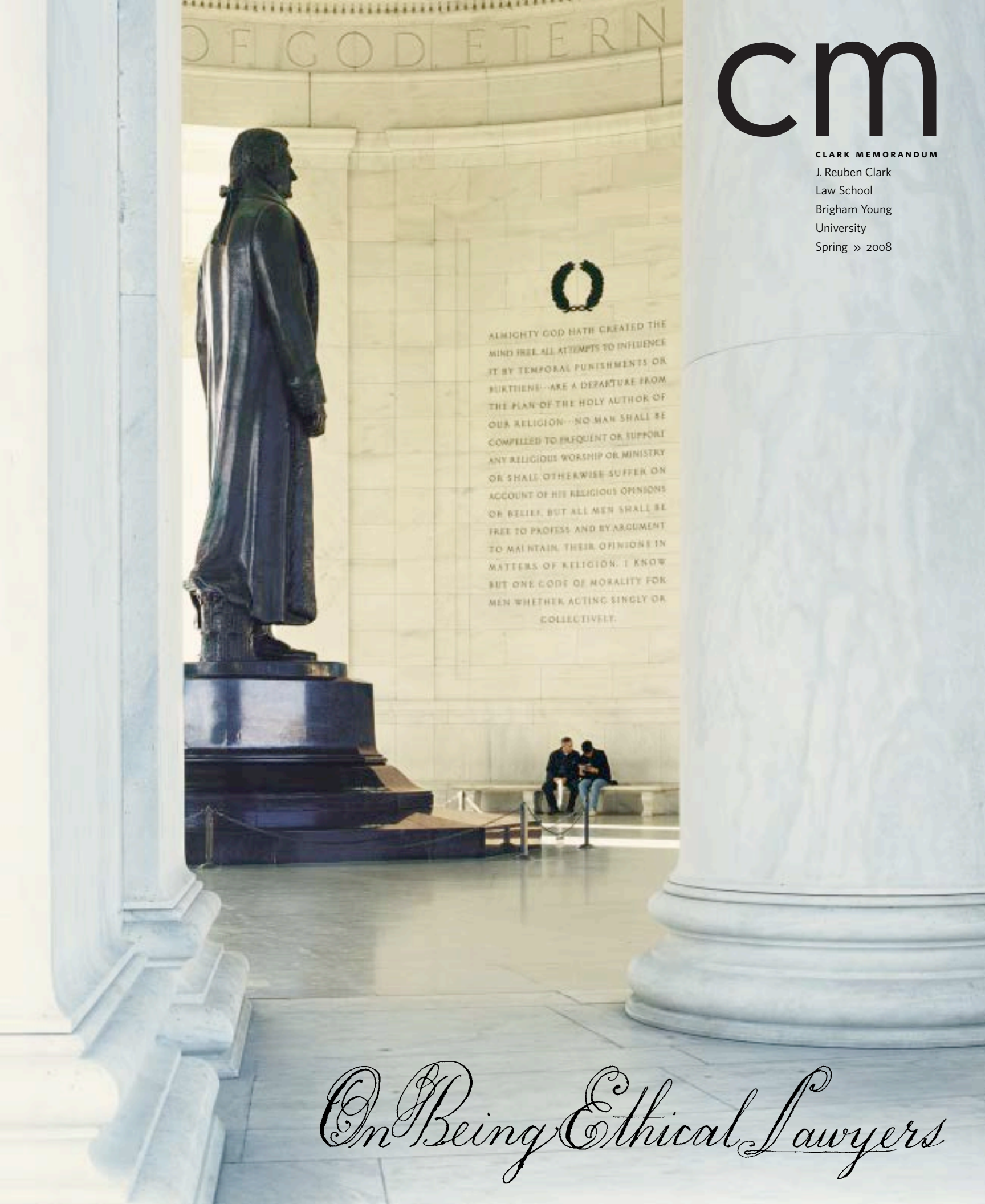


Part of the [Legal Ethics and Professional Responsibility Commons](#), [Legal Profession Commons](#), [Practical Theology Commons](#), and the [Religion Law Commons](#)

Recommended Citation

J. Reuben Clark Law Society, BYU Law School Alumni Association, and J. Reuben Clark Law School, "Clark Memorandum: Spring 2008" (2008). *The Clark Memorandum*. 43.
<https://digitalcommons.law.byu.edu/clarkmemorandum/43>

This Article is brought to you for free and open access by the Law School Archives at BYU Law Digital Commons. It has been accepted for inclusion in The Clark Memorandum by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.



cm

CLARK MEMORANDUM

J. Reuben Clark

Law School

Brigham Young

University

Spring » 2008

On Being Ethical Lawyers

c o n t e n t s



On Being Ethical Lawyers

Sandra Day O'Connor



2

**On the Wings of
My Fathers**

Larry EchoHawk



8

**The Relevance
of Religious Freedom**

Michael K. Young



14

A Walk by Faith

Elder Bruce C. Hafen

20

MEMORANDA

- + COLTON CHAIR
- + CHIEF JUSTICE ROBERTS
- + J. REUBEN CLARK DVD
- + SUSAN PURDON SULLY
- + FACULTY NEWS
- + CLASS NOTES
- + LIFE IN THE LAW

27

Kevin J. Worthen, PUBLISHER
Scott W. Cameron, EXECUTIVE EDITOR
Jane H. Wise, EDITOR
Joyce Janetski, ASSOCIATE EDITOR
David Eliason, ART DIRECTOR
Bradley Slade, PHOTOGRAPHER

The *Clark Memorandum*
is published by the J. Reuben
Clark Law Society, the BYU
Law School Alumni Association,
and the J. Reuben Clark Law
School, Brigham Young
University. © Copyright 2008 by
Brigham Young University.
All rights reserved.

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.

On
Being Ethical
Lawyers

BY SANDRA DAY O'CONNOR

I'M DELIGHTED to have the opportunity to address the members

*Our country was shaped
by some fine lawyers, starting
with Thomas Jefferson.*

of the J. Reuben Clark Law Society. Your organization's commitment to public service, fairness, and virtue in the law is commendable. ✿ I am here to talk to you about what you need to do to become **ETHICAL LAWYERS**.



I'm sure everyone in this audience both here and participating through satellite broadcast is already firmly committed to being an ethical, moral lawyer. You do not need any more stories of lawyers who pervert the law for their own ends. And I'm sure I don't need to tell you to avoid unethical, shady situations. Your own commitment to your faith has already counseled you in that regard, and I am sure that no one here would engage in behavior that would bring shame on the legal profession.

Instead, I want to talk to you about the hardest part of being an ethical lawyer. There are at least two important parts to being an ethical lawyer. First, as an ethical lawyer, you must refrain from doing things that are wrong. I trust that all of you who are listening will do that without more encouragement on my part.

I want to focus on the second part of being an ethical lawyer. An ethical lawyer must affirmatively choose to do things that are good. I think you will find out as you enter practice that this second part will pose the greater challenge to you.

As you enter the practice of law, you will find that it is not always easy to figure out what is "right" and what is "wrong." On the one hand, it is your duty to act as a zealous advocate for your clients. You need to look out for their interests and advance them, whenever it is proper to do so. You need to hold their confidences in the utmost secrecy. On the other hand, as a lawyer, you are a professional. You are an officer of the courts before which you practice, and you owe the highest duties of fidelity to justice and the rule of law.

You might think it is easy to navigate your way through that maze. But it won't always feel that way. Let me give you an example of a thorny ethical dilemma that a lawyer recently faced. Some of you may recall the Supreme Court's decision in *Atkins v. Virginia*, where the Court decided that it was unconstitutional to execute mentally retarded defendants. But you might not be familiar with its aftermath.

After the Supreme Court's decision, the Virginia courts decided that Atkins was not mentally retarded and therefore could be executed consistently with the Constitution. A few weeks ago, in late January of this year, he was nonetheless removed from death row. The reason had nothing to do with whether Atkins was or was not mentally challenged, nor did it have anything to do with the litigation that had taken place over the decade

since he had been convicted. Instead, it was the result of conduct that took place 11 years ago, before Atkins was convicted.

The crucial point in the prosecutor's case against Atkins was that, out of all the other codefendants who were involved in this case, Atkins was the man who pulled the trigger and killed the victim. If Atkins was the actual gunman, he would have been eligible for the death penalty. If he was not, he could at most have been sentenced to life in prison. The lawyer, whom we will call Mr. Jones, represented a man who testified against Atkins at trial. Mr. Jones' client was one of Atkins' codefendants. The testimony his client offered went to that crucial point at trial: Did Atkins actually shoot the victim?

Mr. Jones had an interesting story to tell. Now, I should caution you that the prosecutor in this case has denied the truth of Mr. Jones' story. But I want to tell you this story for the ethical ramifications. Before Atkins went to trial, Mr. Jones' client gave his side of the story to the prosecutor. The conversation was tape recorded, and the client began by describing the position of the individuals and the firing of the shots.

What Mr. Jones alleges happened when his client started in on that description was that the prosecutor "reached over and stopped the tape recorder." She turned to another individual and said, "Do you see we have a problem here?" According to Mr. Jones, there was a significant problem: Mr. Jones' client's testimony did not match the physical evidence that the police had gathered from the crime scene. The prosecutor realized that the testimony would be damaging to the prosecution. Then, for 15 minutes—off the record, without any tape recording—the prosecutors coached Mr. Jones' client to produce the "right" testimony, that is, testimony that could be used to prove that Atkins fired the fatal gunshot.

Now, if this story is true, and I do not know if it is, there is a problem. No prosecutor should ever attempt to manufacture evidence to obtain a conviction. That obligation is doubly true when the manufactured evidence could spell

the difference between life and death for a defendant. I am sure that none of you would ever consider behaving in this manner. An ethical lawyer must, at all times, refrain from doing that sort of wrong.

But what would you do if you were Mr. Jones? Mr. Jones was present in the room. He only watched these events transpire. He did not ask his client to change his testimony. He did not take part in the conversation. He was not himself a wrongdoer.

What Mr. Jones did was go to his state bar's ethics counsel and ask for advice. He was told in no uncertain terms that he could not make these events known to Atkins' defense or to the public. After all, he was a lawyer. He had an ethical obligation not to prejudice his own client's case. If he spoke the truth, he could have jeopardized his client's deal with the prosecution.

Mr. Jones did not speak, and Atkins was convicted and sentenced to death.

Year after year, stretching over the last decade, Mr. Jones wrote to the bar's ethics counsel, asking if he could now speak up. Year after year they told him that he could not. Finally, after 10 years of silence, Mr. Jones wrote again, emphasizing that his client's case was over. There was no possibility of retrial and no likelihood of any prejudice to his client if he spoke. Under those circumstances, the state bar's ethics counsel finally relented and allowed him to tell his story.

The prosecutor in this case insists that Mr. Jones' story is false. But if it is not, I want you to imagine the ethical dilemma that Mr. Jones shouldered for the last 10 years. On the one hand, he was bound as a lawyer not to prejudice his client's case. On the other hand, he knew that the evidence he had could literally make a life-or-death difference to another man. There was no easy ethical or moral answer for him.

If you were Mr. Jones, what would you do?

Let me give another example that has been much in the news. Move the clock back several years. Suppose you are one of the bright young transactional lawyers who worked for Enron. You are approached by your supervisors, who tell you that they think they've come up with a

***
This speech
was presented
at the J.
Reuben
Clark
Law Society
annual
fireside
beld on the
Arizona
State
University
campus
on February
15, 2008.
***



way to structure transactions in a manner that hides debt and overreports income. Of course, your client and your supervisors both insist that it's all completely—100 percent—within the bounds of the law. You check; you're not sure if they're right. Maybe their actions could be within the letter of the law, but you're pretty sure that what they're suggesting violates the spirit of the law.

But the client did not ask you about either the letter or the spirit of the law. Your client asked you to draw up documents to allow the misleading transactions to go forward. They're not asking you to provide the faulty legal analysis. They're not asking you to fill out misleading reports to the SEC. They're asking only that you write the contract and structure that deal. All they ask is that you do the job you were hired for.

What do you do?

I hope you understand that my point in giving you these examples is to illustrate that being an ethical lawyer is not simple. I hope that none of you are ever faced with these sorts of ethical dilemmas. Being an ethical, moral lawyer can be a tough responsibility.

When you are admitted to the bar of a state, it is not an empty formula. You have to take and pass the bar exam. You must raise your hand and vow to support the law.

Let us look at Mr. Jones' ethical problem. Once he was caught on the horns of his dilemma—once he was forced to choose between keeping his client's case in confidence and allowing a potentially egregious death sentence for another man to stand—there was no good way out. I don't envy him those 10 agonizing years.

But I do want to point out one thing. The account is quite bare. We do not know exactly what happened in that room with the prosecutor. And because they did not tape record those crucial 15 minutes, we will never know. But there is one thing missing from Mr. Jones' version of the tale. When the prosecutor stopped the tape and started prompting Mr. Jones' client to change his testimony, what did Mr. Jones say?

This, you see, was the absolutely crucial moment. I know that this audience intends to be ethical and moral. In order to uphold those standards, you cannot let yourself forget that you are an officer of the court and that you are dedicated first to truth and justice. That moment Mr. Jones experienced in the prose-

cutor's office is the kind of moment that you need to learn to recognize. If you let it slip by in silence, you will find that events pass you by all too quickly. It is probably one of the hardest moments a lawyer can face. It is a moment when you need to do a lot more than refrain from doing things that are wrong; you need to actively choose to do that which is right.

It would be hard for Jones to interrupt a prosecutor who has promised to deal less harshly with your client in order to say these words: "I am sorry, but I cannot allow you to advise my client to give testimony that may not be true." But that is what Jones should have done.

Think about all the things you may lose for your client by speaking up. If your client does not have useful testimony to give at trial, he may not be able to bargain for a lower sentence. His own version of events could be called into question; perhaps the prosecution might try to pin that fateful shot on him instead. By speaking up, you may well hurt your client's future.

The hardest thing you must accept as an ethical, moral lawyer is that it is not your job to win for your client at all costs. You are an officer of the court; that means that one of the costs you must never pay is to put the law to one side. No matter how much it may prejudice your client, you must never advise him—either through action or inaction—to break the law or tell an untruth.

Now, I don't want to judge Mr. Jones too harshly. His repeated efforts to bring this matter to light show that he is a strongly ethical man who was deeply troubled by the events he witnessed. What this story shows is that if you are not vigilant about those crucial moments, if you let silence reign when you must speak up, even the best-intentioned of us might find ourselves in an unspeakable dilemma.

It is a heavy responsibility that is placed on your shoulders when you become an officer of the court. We ask for your vigilance, not only in the courtroom but out of it. We ask for your constant fidelity to the law. We ask you to do and say things that could make you very unpopular, perhaps with the people who are paying your salary. We demand that each and every one of you stand for truth and the rule of law, no matter the personal consequences.

Now let us look at the matter of the young Enron attorney. You can see that it is similar to the example of Mr. Jones. Even if there is nothing wrong in the duties you per-

form, you have a duty to your client and to the law to speak up against shady practices. These days, that duty is codified in statute. But even before it was written as law, an ethical lawyer had an obligation to affirmatively do what was right and tell her superiors that she believed that their plan was inconsistent with the obligations imposed on them by law. I think you can all also see in the case of Enron that what might have appeared as "zealous advocacy" for the client in the short term did not serve the company well in the long term.

I bring up the matter of Enron to emphasize to you that when you become an officer of the court, you cannot pooh-pooh the meaning of that term because you plan to become a transactional attorney. Some of you will never stand before a court or address a jury. You may never enter a courtroom. But that does not mean that the obligations imposed on you are in any way lessened.

As a lawyer you are not just an advocate for your client. You are a representative of the law. It is your duty not only to act according to the highest ethical standards but to make sure that you speak up when others intend to do otherwise. Your highest fidelity is to the law; you serve your clients best by making sure that they understand the duties imposed on them both under the letter and under the spirit of the law.

Now, I've spent a lot of time telling you about how hard it may sometimes be to be an ethical lawyer. Hopefully, none of you will face the kind of situation that I've detailed today. But if you do, you must make up your mind well in advance that you will speak up instead of being silent. I know you are all capable not only of refraining from wrongdoing but also of doing and saying what is right.

What I have just asked you to do is very difficult. But I'm going to ask you to do something in addition. There is another extremely important aspect to being an ethical, moral lawyer. Not only must you be sure that your actions with your client meet the highest ethical standards, but you must also strive to be an outstanding citizen lawyer.

Today we do not often use the term *citizen lawyer*. Most Americans today rarely have a favorable opinion of lawyers in general. They are most often thought of as hired guns.

But our country has been shaped by the work of thousands upon thousands of citizen lawyers who have tirelessly labored to make this world a better place. These lawyers have

been citizens first. Their role has not been that of just the navigator. Instead, their contributions have been closer to the visionary and the architect. Instead of maneuvering about the law, they have chosen to use the law to build vibrant communities.

As lawyers you also will have the power to shape communities. However, more and more in recent years I have heard that young lawyers often have very little time to act as citizens. You've all heard the statistics, I'm sure. Law firms are increasingly worried about "billable hours." Even jobs spent working for the government, in an era where cash-strapped local, state, and federal officials pull out all the stops to make every dollar go as far as possible, are beginning to turn into heavy workloads. Lawyers today work more hours than lawyers in years past.

But it is also true that our civic need for lawyers has increased at an unprecedented rate. By some estimates, almost 80 percent of the need for pro bono services in our communities goes unmet. Boards of civic organizations claim they see fewer young lawyers volunteering. As a result, our communities are suffering.

I hope to inspire you not only to do right but also to do good. In addition to being an ethical advocate for your clients, I urge you to become advocates for your communities.

I hope to impress upon you the vast difference that individual citizen lawyers have made in this country. Today we live in a country that just celebrated the 400th birthday of Jamestown. That settlement brought us the English common law and the rule of law. It was critically important.

Our country was shaped by some fine lawyers, starting with Thomas Jefferson. Jefferson, as we all know, lived in a period of political upheaval. Instead of seeing himself as a mere navigator of law, Jefferson was brave enough to envision a country in which law, rather than reinforcing a centuries-old social order, could be used to bring about change. Using his skills as a lawyer, he drafted the Declaration of Independence. That document was not composed of dry legalese, detailing the rights and obligations of citizens. It did not hide the details of American independence in fine print. Instead, it contained a startling vision of the future of this great nation. That document stated not only that all men were created equal but that "[g]overnments . . . deriv[e] their just powers from the consent of the governed."



Madison built upon the vision of Jefferson: He explained and educated the community about how the Constitution created a government that would be ideally situated to serve the people. . . . Madison, like Jefferson, was a citizen lawyer.

In Jefferson's time, those truths were far from self-evident—they were revolutionary. The Declaration of Independence that Jefferson drafted was not merely a legal document informing Britain it had lost 13 of its finest colonies. Instead, Jefferson's work set forth a vision for our fledgling nation: Our challenge was not just to win independence from taxation but also to forge our country into a refuge from monarchy and tyranny, a place where all citizens could strive to attain life, liberty, and happiness.

That vision, articulated by Jefferson, epitomizes what it means to be a citizen lawyer. There is no question that the Declaration of Independence is a lawyer's document: it sets forth grievances, details the appropriate remedy, and prays for relief. But it did so in a way that created community. At the time it was written, it unified thousands of Americans around the common themes of freedom and equality. Even today the promise of that document inspires citizens to make a positive difference in our world.

After the Americans had won their freedom from British tyranny, they faced a bigger challenge: How were they to enshrine the ideals represented in the Declaration of Independence in their government? The founders of our country knew better than to believe that their government would auto-

matically respect the rights of the people just because they had fought and won a war. They were wary of governmental power, and so when it was time to build our new nation, they knew that the structure of the government had to resist tyranny. They needed to build a structure that was flexible enough to survive the ravages of time but strong enough not to fold under the first great blow.

It is obvious to us now that the solution to this problem is to write a constitution that divides power among those various branches of government. In a nation that is committed to the rule of law, our Constitution establishes what law rules. But when our nation was first conceived, the notion of a federal constitution was not the first thought that occurred to the newly independent states. In fact, the first form of government after the Revolutionary War was the ineffectual Continental Congress, which governed under the Articles of Confederation that left the national government far too weak.

When it became clear that a new form of government was necessary, it was again to lawyers that our nation looked. At the time, it was by no means clear what sort of government we should establish. Most of the states were deeply wary of national government and were loathe to give up the tiniest bit of their power to a potentially tyrannical federal power. It was James Madison who helped to build a legal document that bridged those concerns. Madison proposed establishing three independent branches of government, each of which would act as a check on the others; he restricted the potential reach of the federal government.

After the Constitution was drafted, Madison, along with Alexander Hamilton and John Jay, campaigned tirelessly for its adoption by the states. Instead of hiding the powers of government behind legal maneuvers, he explained the simple provisions of the Constitution and set forth the operation of government. In so doing, Madison built upon the vision of Jefferson: He explained and educated the community about how the Constitution created a government that would be ideally situated to serve the people and bring about the ideals of our young nation.

Madison, like Jefferson, was a citizen lawyer. He envisioned a future and acted to bring that future to fruition. He educated and inspired others to believe in that future.

All good lawyers act as zealous advocates for their clients. Early citizen lawyers acted as zealous advocates for the future, and, in so doing, they shaped our fledgling nation. They defined what it meant for “law” to rule, and they established the necessary conditions for law: democratic consent of the governed and independent executive, legislative, and judicial branches. Without the contributions of those early citizen lawyers to this country’s future, the ideals of the American Revolution may well have perished despite our success in gaining independence.

Of course, since those early days, our country has been pushed forward by a great many citizen lawyers who have made important contributions to our society.

One of our great citizen lawyers was Justice Louis Brandeis. Before his appointment to the Supreme Court, Brandeis was famous for submitting a brief to the court that detailed the damaging effects of a lengthy workday on women. Oregon had mandated a maximum workday of 10 hours for women who worked in manufacturing positions. Up until that point, the Supreme Court had regularly struck down similar legislation. But Brandeis submitted a brief that detailed the ill effects of striking down the legislation and convinced the Court to let the Oregon law stand.

As a Supreme Court justice, Brandeis often spoke out for those who were unpopular. He and Justice Oliver Wendell Holmes Jr. regularly spoke out in favor of the free speech rights of political dissidents in the First World War. He favored an expansive view of the Fourth Amendment, one that protected privacy and property rights of U.S. citizens. His service on the Supreme Court drastically altered the character of that institution. Although his views on the First Amendment were first expressed in dissent, today they are recognized as the law of the land.

No discussion of citizen lawyers would be complete without reference to Thurgood Marshall. From the very beginning of his career, Marshall was dedicated to a higher ideal. While he served his clients zealously, he did so with an overarching goal in mind: ending racial segregation. Soon after graduating from law school, Marshall found himself in the thick of the fight for racial equality. In one of his very first court cases, Marshall challenged the University of Maryland’s refusal to enroll an African-American student in its



Thurgood Marshall takes a moment to reflect after presenting the NAACP’s case to the Supreme Court in the momentous Little Rock school integration case in 1958. Behind him is a portrait of Supreme Court Justice Louis Brandeis.

law school. He argued that the “separate but equal” mandate of *Plessy v. Ferguson* was inapplicable because there was no law school available to African-Americans. Marshall won his case before the Maryland Supreme Court.

He continued to win victories for black Americans through the years. Of course, his civil rights work culminated in his most famous case. Marshall argued the case for the African-American Kansas schoolchildren before the Supreme Court in *Brown v. Board of Education*. A unanimous Supreme Court agreed with Marshall, and, with that decision, a momentous change was wrought in our country. School districts across our nation desegregated, and the words of Brown soon worked their way into the vision of our nation. We had been told for two centuries that all men were created equal. Now Thurgood Marshall unified that vision of equality with a picture of integration: one in which the racist mantra of “separate but equal” became a contradiction in terms. Thurgood Marshall’s exemplary service to the community did not, of course, stop with this monumental change. He was eventually appointed to the Supreme Court, where he continued to work as a tireless champion for individual rights and equality.

Nor was Justice Marshall alone among Supreme Court justices in his service to

our legal community. Before his appointment to the Supreme Court, Justice Lewis Powell oversaw school integration efforts in Richmond, Virginia, and served as president of the American Bar Association. Justice Ruth Bader Ginsburg was a staunch advocate for women’s rights who cowrote the first law school textbook on sex discrimination.

If we look across our nation today, we will find innumerable lawyers who are dedicated to a vision of the future in which the rule of law brings freedom and equality to all. These people work on issues that range from international affairs down to local interests. They are involved in civic organizations. They sit on corporate boards. They serve in state government and in the judiciary. I am sure that they all serve their clients zealously. But good citizen lawyers undoubtedly know that, in the long run, their clients will be best served by zealous advocacy for the future as well.

I encourage you all to remember that the challenge of being an ethical, moral lawyer is much greater than merely refraining from doing what is wrong. Instead, I expect each and every one of you to do both what is right and what is good in this world. You can act as a powerful force for change, and I expect to hear in the coming years that every one of you has done so.

In that vein, I would like to leave you with the wise words of John Wesley:

Do all the good you can,
By all the means you can,
In all the ways you can,
In all the places you can,
At all the times you can,
To all the people you can
As long as ever you can.

Sandra Day O’Connor served as associate justice of the Supreme Court of the United States from 1981 to 2006, the first woman to hold that office. She is currently the chancellor of the College of William and Mary in Williamsburg, Virginia.

ART CREDITS

Page 2: Photography by Bradley Slade, hand-lettering by Elvis Swift (and on cover). Page 3 and back cover(detail): Gilbert Stuart, *Portrait of Thomas Jefferson*, Bowdoin College Museum of Art, Brunswick, Maine; bequest of the Honorable James Bowdoin III. Page 4: Photography by Bradley Slade. Page 6: Gilbert Stuart, *Portrait of James Madison*, Bowdoin College Museum of Art, Brunswick, Maine; bequest of the Honorable James Bowdoin III. Page 7: Photograph, © Bettmann/CORBIS.

25 — ON
— THE
— WINGS
— OF
30 — MY
— FATHERS
— BY
35 — LARRY
— ECHOHAWK
40 —

*This devotional
speech was presented
in the Marriott
Center at Brigham
Young University on
August 7, 2007.*

ILLUSTRATION BY GIANNI DE CONNO

ECHO HAWK: that is the English translation of the name given to my great-grandfather, a Pawnee Indian who did not speak English. He was born in the mid-1800s in what is now called Nebraska. Among the Pawnee, the hawk is a symbol of a warrior. My great-grandfather was known for his bravery, but he was also known as a quiet man who did not speak of his own deeds. As members of his tribe spoke of his good deeds, it was like an “echo” from one side of the village to the other. Thus he was named Echo Hawk.

According to accounts of the first white men who encountered the Pawnee people, the Pawnee were estimated to number about



20,000. Under the laws of the United States they had the right to occupy 23 million acres of land on the plains of Nebraska. When my great-grandfather was 19 years of age, the Pawnee people were forced to give up their homeland along the Platte River to make way for white settlers. In the winter of 1874 the Pawnee people were marched several hundred miles to a small reservation located near the Cimarron River in the Oklahoma Indian Territory.

Like so many other tribes before them, the Pawnee had their own Trail of Tears. Tears on that trail from the Platte to the Cimarron were shed for loss of a homeland, loss of the great buffalo herds slaughtered for their tongues and hides, and loss of a way of life. After arriving at that small Oklahoma reservation, the Pawnee people did not number 20,000. They did not number 5,000. Not even 1,000. Less than 700 Pawnee people survived.

That is a painful history. But the pain was not limited to one generation. In his childhood my father was taken from his parents by the federal government and sent to a boarding school far distant from his home. There he was physically beaten if he spoke the Pawnee language or in any way practiced his native culture or religion. In my generation my oldest sister was sent home from a public school because her skin was the wrong color. I remember sitting in a public school classroom and hearing the teacher describe Indians as “savage, bloodthirsty, heathen renegades.” And, as I look back through past years, perhaps the most painful thought is the realization that in my childhood my family had no expectation of achieving a higher education and becoming doctors, lawyers, or engineers. A college education seemed beyond our reach.

But out of that pain was born promise. Of the six children born to my parents, all six of us went to college. Four of us graduated from Brigham Young University. Three of us became lawyers. We have received the best this country has to offer—the full promise of America.

The most vivid realization of that promise for me came in 1990. That year I ran for the office of attorney general of Idaho. I knew



Great-grandfather “Echo Hawk” was born in 1855 in the Pawnee homeland (now Nebraska).

I faced a daunting task because there had not been a member of my political party elected as attorney general in 20 years. There had not been a person from my county elected to any statewide office in 38 years. And, in all the history of the United States, there had never been an American Indian elected to any statewide, state constitutional office (such as governor, lieutenant governor, secretary of state, or attorney general).

Furthermore, right after I filed my declaration of candidacy with the secretary of state, a political writer for the largest newspaper in the state wrote an article saying I had no chance to win the race for attorney general. He said: “Larry EchoHawk starts with three strikes against him: he is a Mormon, Indian, Democrat.” In response to this challenge, I just went out and worked as hard as I could on that campaign.

On election night I was at a hotel where voting results were being reported. Late that night I received a call from my opponent conceding the election. I remember hanging up the phone and thinking about what I should say to a large group of news reporters who were waiting for me to comment on that historic election. After a few moments of reflection, I walked out to meet the news media and made a statement. I did not have a written speech. I did not need one. I simply spoke from my heart, repeating words I had heard when I was 15 years old. They were spoken by a black civil rights leader on the steps of the Lincoln Memorial:

I . . . have a dream. It is a dream deeply rooted in the American dream that one day this nation will rise up and live out the true meaning of its creed: “We hold these truths to be self-evident, that all men are created equal.” . . .

I have a dream that my . . . children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character. [Martin Luther King, Jr., “I Have a Dream,” speech at the Lincoln Memorial, Washington, D.C., 28 August 1963]

That night I felt the power of those words and the realization of that dream. I felt the full promise of America.

For me life began to change at the age of 14, when two missionaries from The Church of Jesus Christ of Latter-day Saints, Lee Pearson and Boyd Camphuysen, came into my home and presented the missionary lessons. Up until that time I knew very little about Christian religion and had seldom attended any church. When the time came for the missionaries to challenge our family to be baptized, they first challenged my dad, then my mother, and then the children, starting from the oldest child and descending to the youngest. By the time they got to me, the second youngest in the family, everyone else had said yes. When they asked me, I remember looking at my dad. He had this stern look on his face, and I knew what my answer should be.

I was baptized, but I did not have a testimony of the truthfulness of the Restoration of the gospel of Jesus Christ through the Prophet Joseph Smith. I was, however, glad that my family had been baptized. Prior to joining the Church I had doubts about whether my family would stay together because my father had a drinking problem, and this had led to problems within our home. After we were baptized, my father quit drinking and family life was much better. However, I continued to live much the same as I had before I was baptized.

Fortunately my parents made me go to church every Sunday, and I had the benefit of listening to Sunday school teachers, priesthood leaders, and sacrament meeting speakers. I paid attention, but church attendance was not influencing my life.

Things began to change between my junior and senior years of high school when Richard Boren became my priests quorum advisor. I felt like he took a special interest in me. He was a successful lawyer, and I admired him very much. He told me repeatedly, “You can do anything you want. You can go to college, get a good education, and do wonderful things with your life.” He pulled me aside and said, “If you really want to do well in sports, you have to work at it. You have to set goals and develop yourself.”

At this point I was not a particularly good football player. Although I wasn’t a bad athlete, I wasn’t anything special. With Brother Boren’s encouragement and guidance, I set my goal to become a good foot-



*Idaho Attorney General
Larry EchoHawk addresses the Ada
County Courthouse, 1994.*

ball player. We set up a program of weight lifting, running, and skills development.

I was small in size. To become a good football player I had to gain weight. Weight lifting would help, but I had to do more. I began mixing up a special weight-gaining formula to drink. It consisted of raw eggs, powdered milk, peanut butter, and other fattening things. I always put a little vanilla in it to make it taste better. It still tasted awful.

In one year I gained 20 pounds. When I showed up for football practice at the beginning of my senior year of high school, my football coaches could hardly believe their eyes. I thought I was going to be a defensive back, but when practices started, the coaches had me listed as a quarterback. This was disappointing because the captain of the football team was the starting quarterback. I feared that I would again be on the bench. But I was prepared to compete, and I gave it everything I had on the practice field. After a few days of practice, I came into the locker room and saw my name listed as the first-team quarterback. I had beaten out the captain of the football team!

A life-changing moment occurred during two-a-day practices before the first game of the season. Between practice sessions I was playing with my brother and two friends. Someone threw a ball. I turned around at the wrong time, and the ball hit me squarely in the eye. It was a serious and painful injury. I was taken to the emergency room at the hospital. My eye was swollen shut. I couldn't see a thing out of that injured eye. The doctor told me and my parents that it was too early to tell, but I might lose the sight in that eye. He bandaged both eyes and sent me home.

I had to lie in bed for a week. You can imagine how devastating this injury was to me because I had worked so hard and the first game of the season was just a week away. I kept saying to myself, "How could this happen? Why me? How unfair."

But this was a turning point in my life because, as I lay there in bed, for the first time I started to seriously think about the other things Brother Boren had talked about. He had talked about the gospel of Jesus Christ, the teachings of the Book of Mormon, and the power of prayer.

I remember slipping out of bed to my knees. It was the first time in my life that I had ever prayed intently. There I was, with bandages on my eyes, alone in my bedroom, praying for help. I remember saying, "Heavenly Father, please, if you are there, listen to my prayer and help me not lose the sight in my eye." I said, "I promise, if I can just keep the vision in my eye, I will read the Book of Mormon as Brother Boren has challenged me to do."

When the bandages came off, at first I could not see out of the injured eye. But gradually, day by day, my sight came back to near-perfect vision within a week.

My Farmington High School football team had played their first game, and the season was underway. Soon the doctor cleared me to practice with the team. I was able to travel with the team to the next game in Grand Junction, Colorado, but I didn't think I was going to play in the game.

That night our team fell behind by two touchdowns in the first half. Just before halftime my coach approached me and asked me if I wanted to play. I said yes. During halftime in the locker room the coach came to me and said my doctor and parents had cleared me to play. He said to be ready because I might get a chance to play in the second half of the game. Our team did not play well at the start of the second half. Finally the coach came to me and said, "The next time we get the ball, you are going in to play quarterback." I remember being on the sideline and kneeling on one knee, like football players sometimes do to rest and watch the game. I just dropped my head and said a prayer. I whispered that prayer "with real intent" (Moroni 10:4) because I was about to face my biggest challenge on an athletic field. This would be my chance.

The coach called me over, told me the first play to run, and sent me into the game. The play was a bootleg, pass-run option. I was supposed to fake a handoff to the half-back, hide the football on my hip, and roll out around the end. If the field was clear, I was supposed to run with the ball. If the field was not clear, I was supposed to try to throw the football to a receiver. I took the snap, faked the handoff, and rolled out around the end. I could tell after just a few strides that I wouldn't be able to run the ball for a gain. The other team had the play well-defended. A defensive end was rapidly pursuing me and was about to tackle me for a loss. At the last second I saw one of my teammates downfield. I planted my foot, and—this is where the weight lifting paid off—I threw the football as far as I could. As soon as I turned the ball loose, I was clobbered. I was on my back when I heard a loud roar in the stadium. I remember thinking, "I don't know whether they are cheering for my side or the other side." I jumped up and looked downfield. I saw my teammate with the ball 68 yards down the field in the end zone. It was a touchdown! That was the greatest moment of my teenage life. To me, it was an answer to my prayer.

I played the rest of the game. I passed for another touchdown and ran for two more. That night my team, the Farmington Scorpions, came from behind to beat the Grand Junction Tigers. The next day my name was in the headlines of our local newspaper.

I had another eventful football game that year in Albuquerque. We played the state championship team harder than they had been played in any other game that year. After the game ended, one of the football coaches from the University of New Mexico came into our dressing room. He introduced himself to me and said, "We like what we saw tonight." He shook my hand and told me that he would be watching me the rest of the year.

When I recovered my sight after the accident, I had immediately started reading the Book of Mormon. I had not been a good student through junior high and high school. I struggled because my mind was not focused on school. I loved sports but not academics. The Book of Mormon would be the first large book that I had ever read from cover to cover.

As Brother Boren had suggested, I planned to read 10 pages every night. I never missed a nightly reading. When I finished the entire book, I knelt down and prayed. At that moment I had my first very strong spiritual experience. I knew then the Book of Mormon was true. I had received my most important answer to prayer. Up until that moment I had not realized that Heavenly Father had been watching over me and giving me answers to all my prayers for healing and for a witness of truth.

It seemed to me that the Book of Mormon was about my Pawnee Indian ancestors. The Book of Mormon talks about the Lamanites, a people who would be scattered, smitten, and nearly destroyed. But in the end they would be blessed if they followed the Savior. That is exactly what I saw in my own family's history. When I read the Book of Mormon, it gave me very positive feelings about who I am, knowledge that Heavenly Father had something for me to accomplish in life, and instruction in how I could be an instrument in His hands in serving the needs of other people.

After I had finished reading the Book of Mormon and football season had ended, I was sitting in a class one day when a student messenger passed me a note. It said I was to go see the football coach. I went down to his office. The door was closed. I knocked, and he said to come in. I opened the door and looked across the room. The head football coach of the University of New Mexico was sitting there. I remember that moment vividly because as soon as I saw him I knew I was going to college.

Brigham Young University also recruited me, but I wasn't sure if BYU would offer me a scholarship. I remember the meeting with Tommy Hudspeth, the head football coach. He asked me if I had any other scholarship offers. I said, "Yes, I have a full-ride scholarship to the University of New Mexico." I happened to have the scholarship offer from New Mexico in the notebook I was carrying. I handed him the letter, and he read it. He folded it up, handed it back, and said, "You have a full scholarship at BYU if you want it." My hard work, encouraged by Brother Boren, had paid off, opening a door to a college education. But, more important, a seemingly freak accident had opened a spiritual door through which celestial blessings have continued to pour on me and my family.

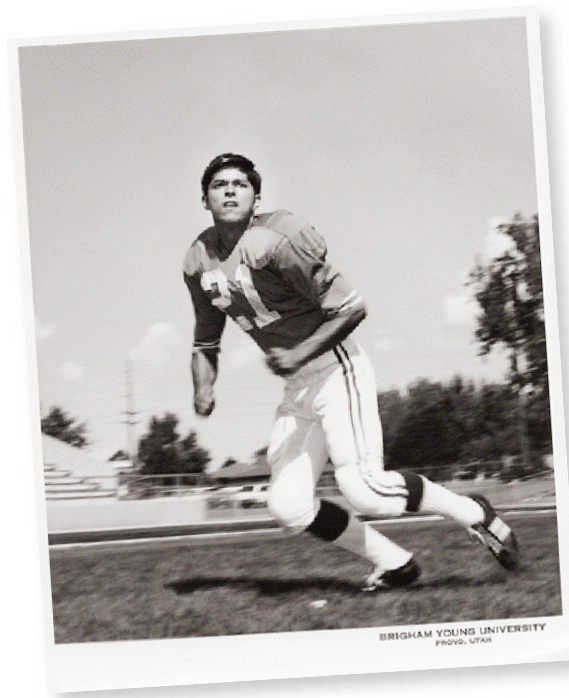
Reading the Book of Mormon and receiving a testimony of it gave me an unexpected but welcome gift in my life.

Being a student-athlete at BYU for four years was a remarkable spiritual experience for me. I associated with many great men and women and learned important lessons in life under their tutelage. I became a product of the BYU experience. My testimony of the gospel of Jesus Christ grew, and I solidified my vision of what I should do with my life.

There was a companion spiritual influence in my youth: Spencer W. Kimball. He was one of my greatest mentors. At church in New Mexico, people talked about the apostle who had a great love for Indian people. The name of Spencer W. Kimball was revered. Prior to coming to BYU I met him at an Indian youth conference in Kirtland, New Mexico, a largely LDS community about 10 miles outside of Farmington. I remember standing out on a softball field with several other Indian youths, waiting for this apostle to come. There was a lot of anticipation. A car pulled up. Men in dark suits got out and started walking across the field toward all these young Indians waiting for the apostle. As the men approached, I stood there thinking, "Which one is he?" Finally he stepped forward. He started talking

to us in a raspy voice. My thought was, "Is this him?" The wonderful thing about him was that he befriended us all very quickly. This was a real feat because it is not easy to get close to Indian youths.

Later, when I was a student at BYU, I heard him speak several times. Like Brother Boren, he provided a blueprint for my life. When I was a BYU student he gave a speech entitled "This Is My Vision." In this talk he related a dream: "I woke up and I'd had this dream about you—about the Lamanites. I wrote it down. It may be a dream. It may be a vision. But this is what I saw you doing." In one part of the speech he said, "I saw you as lawyers. I saw you looking after your people. I saw you as heads of cities and of states and in elective office" (for a more detailed description of the 1946 dream, see Dell Van Orden, "Emotional Farewell in Mexico," *Church News*, 19 February 1977, 3). To me it was like a patriarchal blessing and a challenge from a prophet of God: "Get an education. Be a lawyer. Use your education to help your people." That is what I wanted to do. I carried an excerpt from that talk in my scriptures. At a certain point in my life I read the passage where he said we could become leaders of cities and states, and it



Quarterback Larry EchoHawk plays football for BYU on a full-ride scholarship, 1969.

was as if it were directed specifically to me. Even though I had never envisioned running for elective office, I knew that I could and should do it.

I loved President Kimball. The day he passed away, I cried. I was overcome because I had felt his love for me. I had seen so much of the good that he had accomplished for all people. But I was especially grateful for what he had done to lift Native Americans.

When I graduated from BYU, I decided to become a lawyer for one reason: to help Indian people. After graduating from law school I spent nine years working as the attorney for Idaho's largest Indian tribe, the Shoshone-Bannock Tribes, located at the Fort Hall Indian Reservation. I saw a marvelous awakening under laws that now help Native Americans to become self-sufficient and economically strong. I have always thought it no accident that Indians were able to survive as a separate, identifiable people. I don't know how the Lord is going to use such people in His ultimate plan, but I see many Native Americans who have been able to earn a college education and do the same kinds of things I have done. There has been a very definite positive cumulative impact.

During the Vietnam War I volunteered for service in the United States Marine Corps. Soon after I arrived in Quantico, Virginia, for boot camp, I found myself standing at attention in front of my bunk in our barracks along with 54 other Marine Corps recruits. I met my drill instructor when he kicked open the door to the barracks and entered while yelling words laced with profanity. He was a tough, battle-hardened veteran who had been previously wounded in Vietnam. He started at one end of the barracks and confronted each recruit one by one. Without exception, the drill instructor methodically found something about each recruit to ridicule with vulgar language. I dreaded that it would soon be my turn. When it was my turn, the drill instructor grabbed my duffle bag and dumped my personal belongings onto my bunk. I could not see what he was doing because I had my back to my bunk, and we had been instructed to stand at attention with our eyes looking straight ahead. When we spoke to the drill instructor we had to call him "Sergeant Instructor" and yell out our words. The drill instructor looked through my things and

grabbed my Book of Mormon. He then walked up to me, and I braced myself for his attack. I expected that he would yell at me as he had done with all the other recruits. Instead, he stood close to me and whispered, "Are you a Mormon?"

As instructed, I yelled, "Yes, Sergeant Instructor!"

Again, I expected he would then rip into me and my religion. He paused, raised his hand holding my Book of Mormon, and then, in a very quiet voice, said, "Do you believe in this book?"

Again I yelled out, "Yes, Sergeant Instructor!"

At this point I was sure he would yell out disparaging words about Mormons and the Book of Mormon. But he just stood there in silence. Finally he walked back to where he had dumped my personal things and gently laid my Book of Mormon down. He then proceeded to walk right by me without stopping and went on to the next recruit, who he

ridiculed and disparaged with vile language. He thereafter did the same with every other recruit.

I have often wondered why that tough Marine Corps drill instructor spared me that day. But I am glad I was able to say without hesitation that I am a Mormon and that I know the Book of Mormon is true. That testimony is a precious gift given to me with the help of two missionaries, a priests quorum leader, and a prophet of God. For this I am very grateful.

I bear my testimony of the truthfulness of the gospel of Jesus Christ as contained in the Book of Mormon, and I do so in the name of Jesus Christ, amen.

Larry EchoHawk is the former attorney general of Idaho, Bannock County prosecuting attorney, and chief general counsel for the Shoshone-Bannock Tribes of the Fort Hall Reservation. He is currently a tenured professor at the J. Reuben Clark Law School at Brigham Young University.



New recruit EchoHawk stands at attention during marine basic training at Quantico, Virginia, summer 1968.



Marine EchoHawk visits the Iwo Jima Marine Corps Memorial in Washington, D.C., 1968.



The
Relevance
of
Religious
FREEDOM
— *by* —
MICHAEL K. YOUNG

Tonight^{*}

I will talk about some of the lessons I've learned about religious liberty as I've worked in academics and government—I want to discuss how those lessons can teach us what needs to

.....

PHOTOS BY VAL BRINKERHOFF

be done, and how we as committed members of The Church of Jesus Christ of Latter-day Saints can fill those needs.

I've spent 25 years as an academic studying Asian economic trends, political trends, and human rights, and I spent four years in government service in the George H. W. Bush administration. The timing in that administration gave me an opportunity to work closely on the issue of German unification as well as on some significant trade and human rights treaties. After my work in the Bush administration, I returned to Columbia University to direct and organize a program on international human rights and freedom of religion. I also served on the U.S. Commission on International Religious Freedom, a statutorily created watchdog commission designed to give the State Department, the NSC, and the president advice on how to integrate issues of human rights more deeply into our foreign policy, especially issues related to freedom of religion. Through all of this I was an observant, dedicated, committed member of The Church of Jesus Christ of Latter-day Saints. Each of these roles informed my understanding of the world and particularly of people who are religiously observant and hope to remain so.

What did I learn from academics and government? Religion is very important in every geopolitical event I have ever studied or participated in. For instance, in the 1930s and '40s, the Japanese government manipulated an indigenous set of morals and ethics into a religion that became known as State Shinto, a form of the Shinto religion allowing the government to control the priests and the doctrine and eventually to manipulate the religion into a form of nationalism.

We all know the role that the Catholic Church played in the solidarity movement in Poland, but lesser known is the role that the church has played in Germany. There has been a religious influence in a number of different countries such as Hungary and Russia. China had an extraordinarily extreme reaction to Falun Gong, a combination of Daoism and Buddhism, and repressed the religion with enormous ferocity. Why were the Chinese so concerned about this seemingly harmless form of meditation? It has to do with the astute sense of history that Chinese leaders have possessed as they have seen political movements derived out of religiously

based organizations. For example, the White Lotus Rebellion, the Taiping Rebellion, and the Boxer Rebellion all came during times when the present government was viewed as morally corrupt and relatively weak, so alternate sources of loyalty began to develop. In each instance the Chinese government reacted and successfully suppressed the rebellions, only to lose power within a few years because the cost of suppression was so high and because the very rise of the movements demonstrated the fundamental weakness and invalidity of that government. Chinese leaders are no fools. They understand the threat that something even as innocuous as Falun Gong presents to them.

So here is point one: Throughout my career in academics and in government, I have seen again and again that religion is important—profoundly important—to virtually every major geopolitical event. It seems like a simple point, but it is the first point, and one not shared very commonly by many policy makers around the world.

The second point I want to make I learned from my experience at Columbia as well as from my work on the U.S. Commission on International Religious Freedom. Again, this commission was created by Congress to provide input into our foreign policy formation process that would ensure that our foreign policy was better designed to advance human rights, particularly human rights related to freedom of religion. This was in part because of congressional mistrust of the State Department and of the administration. We had a chance to study religion and how it was being treated in a variety of countries around the world and to then formulate ideas about how those repressed people might be helped by our persuading their governments to repress them a little less vigorously.

So what did I learn from that? I learned that religion is important not only to geopolitical movements but also to individuals. Geopolitical movements are amalgams of people's preferences, their views, and their beliefs. Religion is important geopolitically precisely because, to the vast majority of the world's population, religion is profoundly important individually: Why are we here? Where did we come from? How do we live a life with mean-

ing and purpose? How do we raise our children? What do we teach our children? What happens when we die? The most basic human elements of human dignity are found in those sets of questions—what it means to be human—and, therefore, to individuals, religion is profoundly important. It is how we define ourselves. We are not defined by the government; we are not defined by our external circumstances. Religion is the opportunity for us to reflect and define ourselves.

This is important to governments precisely because it is important to individuals, who act collectively as a nation. People who are religiously observant necessarily have

an allegiance to something higher than the state. And for some governments it is very threatening to know there may be organizations out there more likely than the government to secure the allegiance and the adherence of their members. It also means that those who are religiously oriented believe there are some areas of life into which the government can't intrude. There are things an individual can do that the state cannot suppress and is not entitled to suppress. That's why religion is important to governments, particularly governments that seem to be insecure or authoritarian. Religious liberties are often the first rights to be suppressed—the canary in the coal mine of human rights. (I use that analogy and nobody under the age of 40 ever understands it, so I'm going to ask you who are under 40 to ask your parents what "canary in the coal mine" means.) Suppression of

religion is an early warning signal of more repression to come. Religion is fundamental and profound; therefore it is threatening in some ways to governments that are themselves insecure in their power.

While on the commission I learned that governments are capable of extraordinary repression and can be remarkably vicious. I met persecuted people face-to-face: Christians in China, southern Sudan, Vietnam, and North Korea; Jehovah's Witnesses in Belgium; Muslims in India and Gujarat; Buddhists in Vietnam, Laos, Pakistan, and Mahis; Jews in Iran; Scientologists in Germany; and members of the Unification Church in Japan. Many were persecuted, humiliated, and discriminated against, and, believe me, there is significant

...
*This article
is adapted
from a talk
presented
at Campus
Education
Week at
Brigham
Young
University
on August
21, 2007.*
...



death and torture out there. The reasons for suppression vary from government to government, but they are in the end very relevant to what we think about as we think about the world going forward.

Authoritarian governments are one example of governments that are often insecure with respect to religion. They impose and maintain social and political control, their leaders aren't chosen by the people, and people have little say over state decisions. Religion can be seen in those cases as an alternate source of loyalty and therefore very threatening. Examples of nations with such governments are North Korea, Turkmenistan, Uzbekistan, and China.

Then there are governments that on their own cannot garner adequate support and so rely on some identification with the majority religion to remain in power. These are countries that may establish official religious laws conforming to the main religion but apply

them to everybody, whether a person is a member of that religion or not. There is often an overlap between official authority and religious authority.

My third point is that governments are divided between majority and minority religions and don't have the authority, the power, or the capability to mediate between those religious differences. Think of Indonesia and the tremendous outbreak of violence there in '98 or the conflict in Malacca in '99. Think of the slaughter of the Muslims by the Hindus in Gujarat, India.

I was asked a year ago if I would be willing to do a presentation for the Area Committee of the Church, which consists of a number of General Authorities who help watch over Church activities throughout the world. It includes a number of members of the Twelve and the Seventy. I was told to cover a few countries in 10 minutes, leaving some time for questions and answers. I

talked about Russia and the former Russian republics as well as countries in Asia, Latin America, and Africa. Interestingly, it was a useful exercise because, as I looked at the patterns of repression, I realized that governments that suppress religious freedom for reasons relating to political control may do it quite differently from governments that do it in an attempt to repress intercommunal violence. The former countries are actually loosening their restrictions around the world. One may look at China, Vietnam, and Cambodia—not free, to be sure, but certainly freer than they were a decade ago. On the other hand, countries that control religious expression because of concerns over intercommunal violence—such as Pakistan, India, and Turkey—are getting substantially worse in terms of freedom. Circumstances have an enormously powerful impact on how governments deal with the issue of religious freedom.

This is a point that I want to turn to now. The other thing I realized in the course of this presentation was that the world is in a very good place in terms not only of religious freedom but of many things. We read the newspapers and we continue to think the world is a violent, disastrous, terrible place going downhill. But let me read you some statistics. As we think about human rights, let me cite some important statistics from a report by the Human Security Centre at the University of British Columbia. It found that by the end of the Cold War in 1990, armed conflicts had declined by 40 percent around the world. The number of deadly conflicts—those that kill

regate wars through smaller countries, and that has dramatically reduced the need for battles in Nicaragua, Iran, and other places. Additionally, the decline is due to the spread of democracy. I think at the end of World War II there were approximately 20 countries that you could have identified as having most of the characteristics of a democracy. Now the number is close to 90. That's an extraordinary difference.

Professor Amartya Sen, a Nobel lawyer and economist at Harvard, spoke at our university recently and made the point, quite profoundly I thought, that no two democracies have ever fought a war against each other.



more than 1,000 people—have declined by 80 percent. Civil wars have dropped by 80 percent. The number of military coups has dropped dramatically. Genocides have dropped by more than 80 percent. Not only that, the number of people killed in an average conflict has dropped extraordinarily. In 1950 the number of people killed in an average conflict was 38,000. Today it is 600. From 38,000 to 600 is a 50-fold decline. Now, for those who were killed, I don't mean to diminish the horror and the terror of war as it does exist, but what we have to understand is that we are in a very different place than we were even 15 years ago. I can talk about a substantial decline of the number of refugees, and the list goes on.

Now, why is that the case? Well, part of it has to do with the end of the Cold War. Also, countries are no longer fighting seg-

Tom Friedman, who wrote the famous book *The World Is Flat*, describes it differently. He said, "No two countries with a McDonald's have ever fought a war against each other." But whatever the touchstone is, the point is that the world may be in a place where there's more opportunity to do good than at any time since the end of World War II. That is an exciting development.

Nevertheless, the third point I want to make is that this challenge is complex. This is what I learned at Columbia. The program we designed was to bring the secular human rights community—which is not faith-based, and, indeed, is sometimes a bit dismissive of expressions of faith—together with the religious liberties community—which is generally faith-based and somewhat mistrustful of the Godless humanists who

run the secular human rights community. One of the things we learned as we tried to bring these groups together is how complicated these issues are. It's very easy to agree that people should stop killing each other, but after that it becomes more complicated.

For instance: head scarves. On the one hand, we say it should be a matter of freedom whether somebody wears a head scarf or not. On the other hand, some say that to reject the head scarf is a political signal of rejection of certain fundamental values for which the government stands. So maybe they should be able to stop head scarves and not allow driver's license pictures of people showing only their eyes. If you start from the supposition that covering one's head is a sign of respect and a reflection of a view that perhaps people, men in particular, will be less tempted if they don't see anything and therefore more capable of living their religion, then this becomes a different issue, an issue that if put in the context of pornography we perhaps will begin to understand in a different way.

And there are issues relating to proselytization, for example. You may have seen the recent article in the paper about how the World Council of Churches has created protocols on proselytization. There is a concern in many developing countries that rich religions are coming in, buying up converts, and disadvantaging the indigenous religion that may not have the resources to do that. Well, that sounds plausible, but isn't the most profound purpose of religion to perform work for the needy? Isn't that the message of every single major sermon in the Book of Mormon?

It's easy to think that our Church doesn't really confront any of those issues because we are very respectful in proselytizing. But in Europe one finds that there is an increasingly powerful gay and lesbian movement with perfectly appropriate people demanding rights. What are some of the mechanisms they are thinking about for enforcing that? Well, organizations that may not provide equal rights would not be entitled to government benefits like the right to establishment, the right to own property, and the right for tax deductions. Well, this is appalling, we think. Yet here in the United States we have done precisely that with respect to racial discrimination. In a major case, Bob Jones University's tax-exempt status was denied,

and deductions given to Bob Jones University were no longer considered tax deductible, because of the school's racial discrimination. These are complex, difficult issues that require serious, sustained thought.

Religion is profoundly important intellectually. We cannot understand geopolitical movement, economics, politics, and history without taking seriously the role and the nature of religion in the process. I think, by and large, the academics in America, and indeed the world, have failed. Religion has been largely written out of the curriculum. That's not as important as the fact that as a powerful component of various intellectual

Let me give you a couple examples of this in the Book of Mormon. First, take Alma's interaction with the anti-Christ Korihor in chapter 30 of the book of Alma. Korihor begins to preach against the prophecies that had been spoken by the prophets. The Book of Mormon makes it clear, however, that this was not a concern of the law. Even before we learn how pernicious Korihor's teachings were, we learn that "the law could have no hold upon him" (Alma 30:12). Now, in case we miss the point, the scriptures tell us that "there was no law against a man's belief" (v.7); this is beginning to get kind of repetitive. But they don't leave it at that; three more verses say it

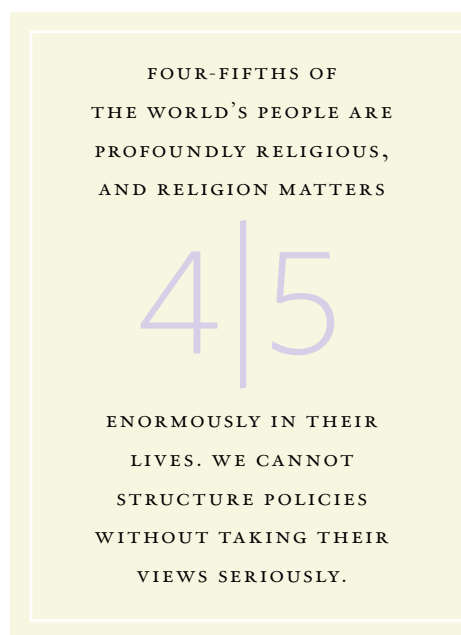
reply to Moroni's rather intemperate letter to him. As you recall, the Lamanites were knocking at the door while some grasping Nephites were attempting to take over the country. Moroni is very unhappy; there are no supplies coming. At this point he writes a rather scathing letter to Pahoran. Pahoran writes a scathing letter back, but he puts it in a drawer and then later writes a more temperate letter. In it he says that he understands the problem and wants to send supplies, but he can't because he's defending his people. Would Moroni come and beat back the Nephites who are trying to destroy the kingdom? But Pahoran doesn't want to leave the other people undefended, so he says to send Lehi and Teancum to contend with the invaders. He urges Moroni to give them "power to conduct the war . . . according to the Spirit of God" (v.15). Not a surprising injunction to be given to such spiritual people! He goes on to say that this spirit "is also the spirit of freedom which is in them" (v.15).

I'm going to stop here and just say that as I look at the world, I stand back and think that not only have I had an intellectual and a professional interest in religious liberty, but for me there is a sense of religious urgency to this mission as well. I feel like when the last day comes, be it my last day or the world's last day, I want to be found with my shirtsleeves rolled up. I want to be found with sweat coming down my brow. I want to be found with my lip a bit bloody from the fight to protect not only my freedom and your freedom but also the freedom of everyone around the world, because even if others make choices with which I profoundly disagree, the imperative to give them the same opportunity that I have is one that finds profound and important support in the scriptures—it is an obligation that goes to the very heart of the gospel. I say this in the name of Jesus Christ, amen.

Michael K. Young is the president of the University of Utah and the former dean of the George Washington University Law School.

PHOTOGRAPHY BY VAL BRINKERHOFF

Page 14: *Mary and Baby Jesus with Stars and Pillars*, 1436, Duomo, Florence, Italy. Page 15: Moai Statues, 1400, Easter Island, South Pacific. Page 17: Towers, north view, San Diego California Temple, 1993. Page 18: Middle period temple, 1100, Bagan, Myanmar (Burma). Page 19: The Blue Mosque, 1617, Istanbul, Turkey.



disciplines, rebellion is almost totally absent. That has to change.

We also must take religiously oriented people seriously. We can no longer dismiss their claims and their concerns. Four-fifths of the world's people are profoundly religious, and religion matters enormously in their lives. We cannot structure policies without taking their views seriously. That's very hard. That emphasizes my third point: *These are complex and difficult issues.*

Let me conclude with one last thought. It comes from a longtime membership in our Church and an enormous amount of thought about what that means. What I've concluded, a bit to my surprise, is that freedom of religion is not merely a practical, prudential, and wise policy. It is in fact profoundly theological, and it may be more theological than it is practical and political.

was strictly contrary to the commands of God that there should be a law that should bring men onto unequal grounds. This teaching is not prudential—this is a commandment. But it's a commandment because it is essential to keep people on equal grounds. And the very next verse tells us why: "For thus saith the scripture: Choose ye this day, whom ye will serve" (v.8). In other words, this command from God is essential; it's predicated on the most profound principle of all, and that is agency. Anything else, whether it's designed to give us choice or someone else choice, even if it's a choice we don't like very much, is contrary to the commands of God. In fact, this is said in the context of Korihor, who is saying things about as repugnant as one can imagine.

Pahoran says the same thing in Alma 61 when he gives that tremendously temperate



MY MAIN QUALIFICATION
TO TALK TONIGHT IS THAT
I WAS PRESENT AT THE LAW
SCHOOL'S FOUNDING. IN
1971, WHEN I WAS FOUR
YEARS OUT OF LAW SCHOOL,
THE NEW PRESIDENT OF
BYU, DALLIN OAKS, HIRED
ME AS HIS ASSISTANT—PRI-
MARILY TO HELP GET THE

A WALK *by* FAITH

FOUNDING STORIES OF THE LAW SCHOOL

BY ELDER BRUCE C. HAFEN

The following speech was presented at the J. Reuben Clark Law School Founders Day dinner held at Little America Hotel in Salt Lake City on August 30, 2007.

PHOTOGRAPHY BY BRADLEY SLADE

Law School started. I accepted that job because I hoped to be on the school's faculty.

I've been encouraged to tell some of the Law School's founding stories. Why would those stories interest us after so many years? Because there is power in stories. Even the scriptures are primarily a collection of personal stories. In His desire to give us guidance about life, God could have given us a large rule book, a series of essays, or perhaps a Gilbert's outline with the title "Life, in Black Letter Law." But He didn't. He gave us scriptural stories about people like ourselves. We can identify with these stories, and then we learn from them. Think of it as case law—real cases about real people who are often in perplexing circumstances. What these people discover teaches us about principles derived from real-life experience. Sometimes the scriptures tell us a story and then say, "And thus we see . . ." Some of the Law School's founding stories are like that.

The person who first proposed the J. Reuben Clark Law School was Ernest L. Wilkinson during his final years as president of BYU. President Wilkinson had done more than anyone to create the magnificent BYU campus we see today, and I am grateful to him that he proposed a law school. However, his vision of legal education carried some political overtones that some of the Church's leaders did not share. Moreover, his proposal ran counter to BYU's basic mission as an undergraduate university. So Ernest's motion might have died for want of a second. But somehow the law school idea caught the First Presidency's imagination enough that they chose to pursue it in their own way.

They talked with many leading LDS lawyers and law professors. None of the three lawyers who ended up as the Law School's first leaders—Dallin Oaks, Rex Lee, and Carl Hawkins—at first thought the Law School's creation was a very good idea, and they all expressed that view to Church leaders. They saw no need to train more LDS lawyers, and they worried that the school might become someone's political captive.

In spite of that candid advice, and even though they chose not to adopt President Wilkinson's politically flavored model, the Brethren decided to create the Law School anyway. They had felt a clear spiritual nudge, and they knew from experience that the reasons for that nudge would eventually become

more clear. The process of acting on an inspired premise and then discovering a supporting rationale by hindsight is not unusual. That is what happened with the Law School's founding, and it happens in other ways when we walk by faith.

Dallin Oaks was a full professor at the University of Chicago Law School and a stake presidency member in Chicago during the discussions about two concurrent events—appointing someone to replace Ernest Wilkinson and creating the Law School. When the Brethren talked with him about becoming BYU's president, they knew his reservations about starting a law school. They said they only wanted a school that met very high professional standards, and they were willing to fund it. Then they asked, if he were president, would he see it as his duty to carry out their vision for the school? President Oaks accepted their counsel and superbly carried out their mandate. Thus we see that giving counsel to Church authorities means two things: give your best honest advice; and, when they make a decision, don't oppose it—advocate it.

Here's how I learned firsthand about the nonpolitical attitude of the Brethren toward the Law School. President Marion G. Romney was the First Presidency's representative for Law School matters. He had chaired the committee that recommended Dallin Oaks to be BYU's president. That same committee later selected Rex Lee to be the founding dean. President Romney also conducted a personal interview with each prospective law faculty member.

During his interview with me, President Romney said, "Now, let's talk about your politics." That got my attention. He said, "Are you either a Socialist or a John Bircher?" I said, "Some people think those are the only two choices." He said, "I know. That's why I'm asking. Are you a Socialist or a Bircher?" I said, "No, I'm neither." He said, "Then you're alright. Let's talk about something else." Later on, when I shared that experience with President Oaks, he said, "Tell that story—widely and often."

One of the best role models for the Law School's commitment to political diversity is President James E. Faust. He was once president of the Utah State Bar, and he served in the Utah legislature as an active Democrat. While in the First Presidency, he once said,

"Both locally and nationally, the interests of the Church and its members are [best] served when we have . . . good men or women running [from both parties], and then no matter who is elected, we win."

I once heard President Faust say that his most satisfying experiences as a lawyer came not in representing big corporations but in representing those he called "the little people," meaning people who are disadvantaged in some way, perhaps including their ability to afford legal advice. As a lawyer, he was a humane servant and a spiritual healer.

Is it inconsistent to be both a healer and an advocate? The Master Healer often referred to Himself as our "advocate with the Father." I will forever be grateful that Christ, the greatest Advocate, is willing not only to represent the guilty but also to heal them. The story of the Savior's life and mission is the most significant story embedded in the deepest foundations of the Law School.

Let me return to 1971 and 25 years of working closely with Rex Lee. Rex was one of the most talented and colorful characters ever to walk among us. He came from a tiny town in Arizona to BYU in 1953 as a wide-eyed freshman who dreamed of someday becoming one of the greatest lawyers in America.

Rex's first great victory as an advocate came in his BYU student days, when he persuaded Janet Griffin to marry him. With her grace, refinement, and deep spiritual instincts, she made that Arizona diamond in the rough really sparkle. Early in their dating, Rex once heard that Janet had been out with somebody else. His way of communicating his feelings was to call her on the phone, and without identifying themselves, Rex and his cousin played their guitars and sang to her with pure Arizona honky-tonk pathos: "Your cheatin' heart will tell on you. . . ."

Rex never lost his rural Arizona sense of humor. Once when he was telling jokes at a BYU fund-raising dinner, a non-LDS visitor at our table said, "Who is that guy? Listen to his sense of timing! He could make a fortune as a stand-up comedian." I still remember one of Rex's favorite stories—maybe he told it that night: A very frugal man dies. His widow, honoring his frugality, calls the local paper and asks, "What is the cheapest obituary I can buy?" The paper agent says, "We're having a special today—you can get six words for the price of three—just 15 dollars." She

says, "Is that your cheapest obituary?" He says, "Yes." "Alright," says the widow, "let's try 'Fred died Wednesday.'" "Okay," he says, "you get three more words—it's all included in the 15 dollars." "Oh," she says, "Fred died Wednesday. Toyota for sale."

Rex and I served in the same BYU student stake for a few years; he was on the high council and I was in the stake presidency. Once he told me why he liked being on the high council so much. He said, "That calling has the best ratio between work and glory of any job in the Church." We didn't know whether to increase his work or decrease his glory. Another time we sat together in a sacrament meeting on a warm afternoon. Rex had dozed off. I nudged him and whispered, in jest, "Rex, you're supposed to get up and give the closing prayer." He opened one eye and said, "The First Amendment to the Constitution of the United States protects the right of religious freedom. You worship your way, and I'll worship mine." Then he went back to sleep.

In a more serious vein, may I share what I heard Rex say more than once to graduating law students. With that look he flashed when he was feeling what he called "deadly serious," he would say,

If you forget everything I've taught you about constitutional law, please remember one thing about me. I wasn't there on that spring day in 1820 when Joseph Smith saw the Father and the Son; but I know as surely as if I had been there that Joseph was God's prophet and that Jesus is the Christ.

When I heard these words from Rex's heart, I sensed that J. Reuben Clark, whose massive old desk was in Rex's law school office, would have felt glad about the school that bears his name.

In late 1971, after interviewing a number of people, including some with considerable experience as law teachers, President Romney's committee selected 36-year-old Rex Lee as our founding dean. At the time, this seemed like a very risky, even audacious, decision. The Law School wasn't accredited; it had no faculty, no building, no library, and no students; and everything rode on the academic reputation of the dean and the faculty. Rex was a young practitioner from Phoenix who had never been a full-time law teacher and had never published a law journal article

as a faculty member, though he had taught a part-time class or two. He had graduated at the top of his class at Chicago and had clerked for Justice Byron White; but his was a career of potential, not accomplished fact. Only later would Rex go on to be assistant U.S. attorney general, then solicitor general, and then a star Supreme Court advocate.

Because other LDS candidates considered for dean had far more experience in legal education, I was frankly a bit astonished when Rex was chosen. Yet just before I learned of his selection I had a strong premonition that Rex would be the dean. I once had a chance to ask President Romney why his committee chose Rex. He said in his matter-of-fact way,

Well, I told the Brethren that I didn't know anything about how to pick a law school dean. But I did know how to pick a stake president, because I'd done that many times. They said I could do this the same way. So that's all we did: we interviewed carefully, searched their hearts, and prayed for direction. All I know is, Rex was the man the Lord wanted, and I couldn't tell you why.

Now, with over 30 years of hindsight, it was a brilliant decision, for all of the reasons Judge Dee Benson cited last year about Rex's charismatic leadership and his eventual national reputation in the U.S. Justice Department and beyond. But no one could have foreseen that with certainty in 1971. Rex was simply a young man of promise. The decision to appoint him was an act of faith based on a clear prompting to the Lord's anointed servants. Thus we walk by faith, not always knowing beforehand the things we should do.

As important as choosing the dean—in some ways even more important—was the selection of the first faculty. The whole idea of trying to build a genuinely religious law school that would be nationally recognized seemed pretty far-fetched in 1971. A new law school can't be accredited until after the first class graduates. So how do you persuade talented new law students to risk their future careers on an unknown school? The ABA's accrediting team was already very skeptical about mixing religion with legal education. And how about the very secular law firms who would need to hire the graduates? Most important, because so much else hinged on it, how do you persuade experienced LDS law teachers to leave secure positions for an

TO PRESIDENT
ROMNEY,... AS
TO HIS GREAT
MENTOR, J.
REUBEN CLARK,
INTELLECTUAL
EXCELLENCE
WAS SIMPLY PART
OF ABUNDANT
SPIRITUAL
EXCELLENCE.

unproven venture? Yet if the Law School couldn't establish strong credibility right at the beginning, it might have been impossible to claim it later on.

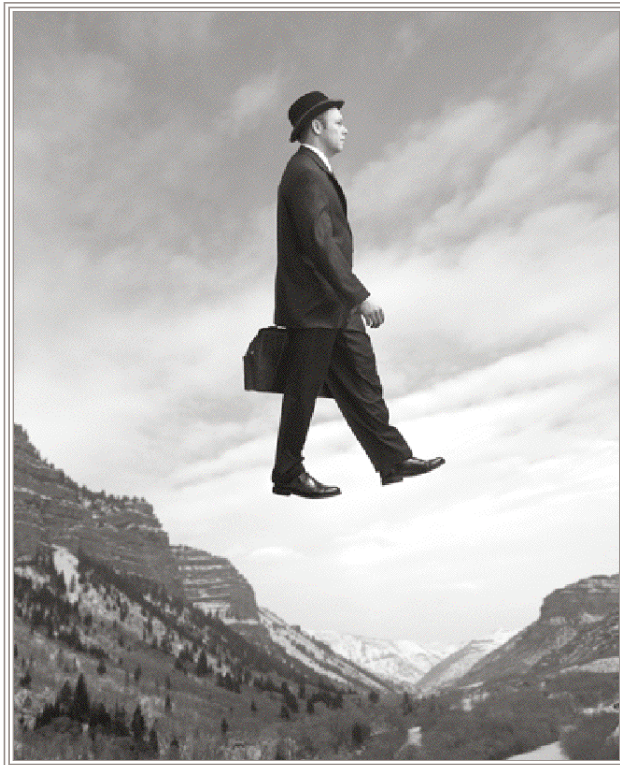
A few months after Rex's appointment, we were getting a little frantic. None of the experienced LDS law teachers had committed to come. Rex and others had made personal visits to each person on this very short list, but they were all waiting to see what one man—Carl Hawkins—did. Carl was a senior professor at the University of Michigan, one of the nation's top law schools. He was the stake president in Ann Arbor, was the coauthor of a well-known torts casebook, and was respected in the world of legal education for both his intellect and his integrity. Carl wasn't about to leave all of that to take a chance on BYU. Indeed, he believed he could help the Church more by staying at Michigan, because that vantage point gave him a more objective supporting voice.

In an act of desperation, Rex recommended to President Romney that the First Presidency call Carl on a mission to the Law School. President Romney said, "We don't do things that way." Ever the creative advocate, Rex said, "But President Romney, remember when Joseph Smith and Oliver Cowdery received the Aaronic Priesthood, and Joseph had to baptize Oliver before Oliver had baptized him? Sometimes when we're just starting out, we have to do things a little differently." But it was no use. We could do nothing but pray.

Then one day Rex and I were in President Oaks' office with BYU's academic vice president Robert Thomas. President Oaks' secretary called to say that Carl Hawkins was on the line. Dallin took the call and talked softly with Carl out of our hearing. When he hung up he looked out the window of his office at Mount Timpanogos, and I saw tears in his eyes. Then he smiled and said to us, "The Lord must really want this Law School. And He wants it to be a good one. Carl is coming!" We whooped and hollered as if Lancelot were coming to Camelot. From then on, the other positive dominoes fell into place, and Carl became our senior statesman

and expert witness, attesting to all comers that this law school met the highest standards of professional quality.

Some people have attributed Carl Hawkins' decision to the formidable persuasive powers of Dallin Oaks and Rex Lee, and it is true that their presence at BYU was a positive factor for him. But Carl is a very private person who doesn't say much about his most personal feelings. Only years later did he tell me the real reason why he came. I share this now with his permission.



He knew his decision was pivotal for other people, but he honestly felt he should stay at Michigan. He "could not imagine a more satisfactory professional position" than the one he held. An unusually rational and orderly thinker, he made a list of the reasons for staying and for leaving. He talked with friends and family. But as the practical deadline drew near, he decided to fast and pray. The day he chose to fast turned out to be an exasperating day at school, leaving him no time for personal reflection. So he went to his evening stake presidency meeting, where he planned to discuss his question with his counselors. But pressing stake business took more than their available time. Finally Carl arrived home after his wife, Nelma, was asleep. He was tired and frustrated that his

desire for prayerful meditation that day had gone unfulfilled.

Nonetheless, as he began praying in his bedroom, he reviewed his list of factors for and against going to BYU. Carl later wrote in his personal history:

As I reviewed the list, I drifted into a state that I cannot adequately describe, involving something more than cognitive processes or rational evaluation. Each consideration was attended by a composite of feelings that could not be expressed in words but still communicated something more true and more sure than rational thought. Every consideration that I had listed in favor of going to BYU was validated by a calm, overwhelming sense of assurance. Each consideration I had listed for not going to BYU was diminished to the point where it no longer mattered.

[For example,] I had been deeply concerned whether my valued colleagues at Michigan would be able to understand my reasons for leaving. Now that concern melted away or evaporated into the night mists. . . . If some did not [understand], that would be their problem, and it would not diminish me. I fell asleep, content that I had finally made the right decision.

Soon afterward Carl made that phone call to President Oaks.

The detailed interaction between reasoning and revelation in Carl's experience illustrates the Lord's words: "I will tell you in your mind and in your heart, by the Holy Ghost, which shall come upon you. . . . Now, behold, this is the spirit of revelation" (D&C 8:2–3).

"In your mind and in your heart"—so was the Law School founded on spiritual processes or rational ones? That question would have made no sense to President Romney, because he believed that you need to use your head, even when you end up following your heart. Of course spiritual processes are more important, but, to him, as to his great mentor, J. Reuben Clark, intellectual excellence was simply part of abundant spiritual excellence, and religious devotion was no excuse for professional mediocrity.

At the same time, the stories I've told show that the process of revelation played a

bigger part in founding the Law School than some people might realize. I bear witness of the divine source and significance of that inspiration in the decisions to create the school, to appoint the first dean, and to bring together the first faculty.

I also saw the crucial role of reason, homework, and professional credibility in those same decisions and in the later fruits of the early decisions. Someone once said that the most important factor in solving human problems is the character and the competence of the people trying to solve the problems. When I remember those founding fathers—President Romney, President Oaks, Rex Lee, and Carl Hawkins—I am grateful not only for their faithfulness but also for their competence.

In the 35 years since that founding era, I have marveled time after time at incidents that confirm to me the value and purpose of having this Law School. I'd love to know all the stories of graduates and faculty whose personal life experiences together provide that confirmation. For now, I offer examples from just two legal fields.

First, Marie and I have just returned from four years in the Europe Central Area Presidency, where the process of obtaining legal recognition for the Church in some countries is still unfolding. I saw firsthand in countries like Slovakia, Moldova, and Serbia the fruits of Professor Cole Durham's decades-long effort to establish his professional credibility as an expert on international religious freedom. I also saw his work greatly augmented by Law School graduates who had developed the necessary skill and relationships to help make a difference.

I have reason to think that Cole's initial steps into the field of religious liberty came in answer to his own prayers as a young faculty member about how his scholarly work could someday bless the Church. The quality of his work over many years won the respect of other scholars on international human rights long before he knew that new governments in Eastern Europe and beyond would someday need and welcome the expertise he developed on religious liberty. I recently saw

the power of his influence as missionaries who had earlier been asked to leave certain countries could now go back.

When the First Presidency first felt that spiritual nudge to create the Law School, how could they have known that within 20 years the Berlin Wall would fall and that Professor Durham's stature and capacity would help open the doors of many new nations to the Church?

The second example is family law. When I was a law student, family law was among

*“ALL I KNOW IS,
REX WAS THE MAN
THE LORD WANTED,
AND I COULDN'T TELL YOU
WHY.”...BUT NO ONE
COULD HAVE FORESEEN
THAT WITH CERTAINTY
IN 1971...WE WALK BY FAITH,
NOT ALWAYS KNOWING
BEFOREHAND THE
THINGS WE SHOULD DO.*

the most boring topics in the curriculum. But since those days family law has become a raging battleground for some of the most significant legal and social issues of our time—issues in which the values of the restored gospel are very much at stake.

Just as the Brethren in 1970 couldn't have foreseen the fall of Communism, they also couldn't have known that family life would come under the relentless—often legally based—attacks we see today.

One way to answer those attacks is to take prophetic statements, such as the Proclamation on the Family, as the premises for our reasoning, then to look for the evidence and develop the rationale to support the premises—something anyone with legal training can do.

For instance, we are living through a revolution in the way people think about marriage. Traditionally the law strictly limited the terms on which people could either start or end a marriage, primarily because the law saw marriage as our culture's primary social institution. But in the 1960s both our courts and our culture began to see marriage more as a private choice than as a social institution. That opened the door to no-fault divorce, which helped make America the world's most divorce-prone society. That trend has led to what some call “the remarkable collapse of marriage,” creating many unstable families and damaging America's children. Damaged children create a damaged society, and when enough families are dysfunctional, society itself is dysfunctional.

President Hinckley has said that the number of people hurt by crumbling families today is an international problem of urgent concern. In his words, “I think it is my most serious concern.”

We are also now in the midst of a national debate about same-gender marriage. The First Presidency has taken a public position against such marriages, but once more they haven't provided a complete rationale. Yet those with legal training can articulate the developing rationale as it is needed. For example, we can see that the gay marriage movement is based on the same individualistic legal concept that created no-fault divorce in the late 1960s. When the law upholds an individual's right to *end* a marriage, regardless of social consequences (as happened with no-fault divorce), that same legal principle can be used to justify the individual's right to *start* a marriage, regardless of social consequences (as happens with same-gender marriage).

So what is the rationale for the principle that our marriage laws should be highly concerned with social consequences? And what evidence supports the proposition that same-gender marriage is harmful to society? In general, the rationale for both of these principles is in the overwhelming empirical evidence that children do far better by every measure of child well-being when they live with both biological parents.

This isn't the time to develop those comments further, but I'll share an image from family law that reflects a larger point. I remember a Japanese family law professor who came to BYU a few years ago after reading some of our faculty's scholarly work. He was troubled about the devastating effect of individualistic American law on Japan's traditional, family-oriented culture, but he had seen a much more encouraging approach coming from the work at our law school. He said, "The Americans beat us in the Second World War; why do they also have to inflict on us their movies and their laws?" After he had been on the campus in Provo a few days, he said, "This place is an island of hope in the land of the Apocalypse." He was especially curious about the students he had met. Speaking of them he asked, "What is it about these wonderfully bright and wholesome young people? Please tell me the secret behind all the shining eyes."

In an important sense, each student and graduate of this Law School has a duty to articulate wisely the secrets behind his or her shining eyes, whether in religious liberty, family life, or any other topic laden with gospel values. These are not mere political issues. In so doing, you will illustrate in your own way the inspiration in the founding of the Law School.

You will also demonstrate that inspiration by living lives of consecrated Christian discipleship. Whether in your family, your ward, your office, or your daily walk in life, the influence of your personal example of faithfulness combined with uncompromising competence will do as much as anything else to fulfill the Law School's original purpose. I've heard people from all across the country—senior partners in law firms, judges, political leaders, Church leaders, and others—speak with admiration about the students from this school. I've heard them over and over, and when I do, I think, "There's another example of why the creation of the Law School was an inspired idea."

Tonight's theme about acting by faith and understanding by hindsight is fundamental doctrine. When Nephi first began to

build his ship of curious workmanship, the Lord told him,

And I will also be your light in the wilderness; and I will prepare the way before you, [and] inasmuch as ye shall keep my commandments ye shall be led towards the promised land; and ye shall know that it is by me that ye are led.

. . . After ye have arrived in the promised land, ye shall know that I, the Lord, . . . did deliver you from destruction; yea, that I did bring you out of the land of Jerusalem. [1 Nephi 17:13–14]

These words apply fully to our Law School of curious workmanship as we look back now and know that "it is by me that ye [were] led."

WHETHER IN
YOUR FAMILY, YOUR
WARD, YOUR OFFICE,
OR YOUR DAILY WALK IN LIFE,
THE INFLUENCE OF YOUR
PERSONAL EXAMPLE OF
FAITHFULNESS COMBINED
WITH UNCOMPROMISING COMPE-
TENCE WILL DO AS MUCH
AS ANYTHING ELSE TO
FULFILL THE LAW SCHOOL'S
ORIGINAL PURPOSE.

I hope we might draw on this doctrine in the very personal process of following the counsel of the Lord and His prophet, even when we don't always fully understand the reasons why they give us that counsel. The Law School's founding is a type and shadow of other moments when the Lord may give us a strong prompting or the First Presidency may give us a clear conclusion without supplying a fully developed rationale. Experience shows that in such cases, the rationale will become more clear with time.

That happened in founding the Law School, and it happens in our experience as members of a Church that is blessed by prophetic guidance. Sometimes in seeking

spiritual help for our personal decisions, we simply cannot know everything that would fully explain why a particular path is the right one. So we must often walk by faith, without demanding a complete explanation before we will proceed. Thus, as Paul wrote,

Cast not away therefore your confidence, . . .

. . . that, after ye have done the will of God, ye might receive the promise. . . .

Now the just shall live by faith: but if any man draw back, my soul shall have no pleasure in him.

But we are not of them who draw back. [Hebrews 10:35–36, 38–39]

I am grateful that the Law School founders were not "of them who draw back." They were willing both to work and to wait to see the fulfillment of the Lord's promises about the value of having the school.

One implication of this theme is that as we gain experience in following the Lord and His servants, we will increasingly see reasons for the hope that is in us. Your legal training will bless you to see those reasons unfold after you have committed yourself to walk by faith in some demanding situation. As you see the emerging rationale and evidence, you can help others by articulating to them what you see. That is what good advocates do. As Peter wrote, "But sanctify the Lord God in your hearts: and be ready always to give an answer to every man that asketh you a reason of the hope that is in you with meekness and fear" (1 Peter 3:15).

I thank the Lord for the hope that is in me, above all for my hope in Christ. I testify that He lives and that He directs the work of His servants and answers the prayers of His people, at times communicating with them through "something more true and more sure than rational thought," even to very rational people, even law professors. I not only believe this, I know it. I know it both by a spiritual witness and because of what Helaman calls "the greatness of the evidences" (Helaman 5:50) the Lord has shown me—in my life and in the lives of many others, including our collective experience with the J. Reuben Clark Law School. In the name of Jesus Christ, amen.

Law School Establishes Sterling and Eleanor Colton Chair in Law and Religion

A celebration of the lives of Sterling and Eleanor Colton and the creation of a chair in law and religion in their names was held at the historic Mayflower Hotel in Washington, D.C., on January 24, 2008, by family and friends. Only the fourth endowed chair established at the J. Reuben Clark Law School and the first since 1992, the Law and Religion Chair will help support the ongoing work of Cole Durham and the International Center for Law and Religion Studies at Brigham Young University.

Speakers at the event included President Cecil O. Samuelson, Dean Kevin J. Worthen, J. Willard Marriott Jr. (chair and CEO of Marriott International, Inc.), and Sterling and Eleanor Colton and their eldest son, S. David Colton ('82). David explained:

My parents have been supporters of the Law and Religion Center because they believe the center makes a difference and has expanded the borders of religious freedom. In fact, they enthusiastically supported the work Cole has been doing long before the center was created. It is no wonder when we approached Mom and Dad about the idea of creating the chair they were supportive, not because the chair was in their name—in fact, they were a bit reluctant to have the notoriety—but because of the great good they believed could be done through increased, long-term financial support for the center.

David illustrated the importance of religious freedom in the lives of his parents and forebears.

Quartermaster George Colton came to the American shores in 1644 seeking a better life and religious liberty. Six generations later, in 1838, Philander Colton and his wife, Polly, joined The Church of Jesus Christ of Latter-day Saints, only to be driven out of their homes when religious persecution forced them to move west. Now, another six generations later, Sterling and Eleanor Colton have found the better life and religious expression their forebears dreamed of. They hope that through their support of the center this dream can become a reality for others.

Elder Marriott recounted the influence of the Colton family on the founding and growth of the Marriott companies. Sterling's father, Hugh Colton, and his wife, Marguerite, came to Washington, D.C., with J. Willard and Alice Marriott in 1927 to open the original Hot Shoppe. When Hugh graduated from George Washington Law School, he sold his 50 percent interest in the Hot Shoppes to return to Utah to practice law. Sterling followed his father's footsteps into law, graduating at the top of his class at Boalt Hall Law School, and then finding his way back to the Marriott companies. Sterling would subsequently serve as general counsel to the Marriott companies for many years before retiring. To honor Sterling and Eleanor Colton, the Marriott Foundation is providing a significant contribution to the Law and Religion Chair.

During the event at the Mayflower Hotel, a 10-minute video of the Coltons was presented, showing the couple's support of the Law and Religion



From left to right: BYU President Cecil O. Samuelson, Sterling Colton, and J. Willard Marriott Jr.



From left to right: W. Cole Durham Jr., Eleanor Colton, Dean Kevin J. Worthen, and Sterling Colton.

Center and their friends' memories of them. In the video, Elder Dallin H. Oaks expressed:

When we go to a country to seek entrance for our missionaries, we must be concerned with the extent of religious freedom, with the relationship between law and religious teaching and freedom in that country. BYU in its concentrations in law and religion has been a key, a vital influence, and a source of illumination and assistance to the Church in taking the gospel to every nation, kindred, tongue, and people...

I have a special personal satisfaction in expressing gratitude to Sterling and Ellie for what they have done for the Law School and for the Church in this remarkable gift. They have been very precious to me and to my family. They have been very influential through this important chair in law and religion. How appropriate that a couple so wonderful in their own personal life has given such significant support to matters so essential to the work of the kingdom.

The video may be viewed at www.law2.byu.edu.

The Law School has established a \$3 million goal for the Sterling and Eleanor Colton

Chair in Law and Religion with commitments of approximately 75 percent of that goal. Interested contributors who wish to donate in honor of the Coltons and who wish to support the International Center for Law and Religion Studies may contact Kelly Reeves at 801-422-9347 or at reevesk@law.byu.edu.

The Law School is grateful for the generosity of the Colton family, the Marriott Foundation, and many others who have helped to establish the Sterling and Eleanor Colton Chair in Law and Religion. Their lives are ones of great faith and faithfulness, filled with many quiet acts of Christian service and major Church responsibilities. As their son David expressed:

It is important that we expose as many people as we can to examples of lives well lived in the service of others, that we create a legacy that will endure, that we make clear that a person's religion, whatever that religion may be, is special and sacred and should be honored and freely expressed, and that we establish a platform for the world to hear, in soft and quiet ways, that religious freedom creates the best hope for conflicts to be reduced.

Chief Justice Responds to Law Students

♦ ♦ ♦
Chief Justice John G. Roberts Jr. addressed the BYU student body in a forum assembly at the Marriott Center on October 23, 2007. Afterwards, he visited the Law School for a question/answer hour held with law students. Stephen Mouritsen, first-year law student, attended the session and wrote this report.
 ♦ ♦ ♦



Jaren Willey

I am not sure I know what all those words mean," said the chief justice, responding playfully to a student question that had been packed with an exhaustive list of legal terms. The student had begun the one-hour, question-and-answer session by asking what role the various philosophies of constitutional interpretation play, or should play, in forming judicial opinions. Justice Roberts said that he does not approach cases from any particular philosophic standpoint. He simply begins by reviewing the case and then turning to the Constitution, case law, and any relevant statutes.

While his reticence to allow himself or his fellow justices to be pigeonholed into a narrow category of constitutional interpretation was immediately apparent, Justice Roberts generously spent the remainder of the hour outlining his views on the role of the Court and the duties of the justices.

The Court and Its Times

Justice Roberts made clear that the Supreme Court was governed by constitutional considerations and not by shifting social expediencies. He objected to a student's characterization that the court served as a mirror of domestic social values, arguing that, if anything, the court has historically moved away from prevailing notions and public sentiment. He cited several examples of this circumstance, including the Taney Court's ruling in *Ex parte Milligan* that the military trial and suspension of habeas corpus against civilian defendants was unconstitutional in a Union state where Federal courts were active "in the proper and unobstructed exercise of their judicial functions" (71 U.S. 2, 3 [1866]). Justice Roberts also cited the Supreme Court's early objections to the constitutionality of New Deal policies, as well as the Warren Court's ruling in *Brown v. Board of Education*, which, he said, probably would have come out differently

if it had been put to a popular vote (347 U.S. 483 [1954]).

The Autonomy of the Judiciary

Justice Roberts advocated strongly for an independent judiciary, free from political infighting. He stated that the politicizing of the Court in general and the nomination process in particular are the greatest challenges facing the Court in the future. In a very candid moment, Justice Roberts said that he was entirely indifferent as to what the public at large thought of his judicial opinions, observing that he was not supposed to care what people think about his work. He noted that the insular nature of the Supreme Court was anticipated by the Founding Fathers, citing, as he had earlier that day, the language of Alexander Hamilton in *Federalist* 78: "The complete independence of the courts is peculiarly essential in a limited Constitution." He also cited the lifetime appointments of federal judges and the near impossibility of their being impeached as evi-

dence of the Founder's intent with regards to the judiciary. He spoke, by way of example, of the impeachment trial of Supreme Court justice and Federalist partisan Samuel Chase, stating that the acquittal of Justice Chase by the Democratic-Republican-controlled Senate was an extraordinary example of bipartisan restraint that helped solidify the independence of the judiciary.

He also was amused by the idea that protestors come to the Supreme Court Building to stage demonstrations, as if he and his fellow justices would look out the window, take note of the vehement public objections to a particular issue, and rewrite their decisions in response.

The Diplomatic Court

When asked what had surprised him most when he came to the Supreme Court, the chief justice said that he had not anticipated the diplomatic role that the Court had to play. Soon after his appointment he discovered that his responsibilities extended

to receiving and instructing jurists from around the world who would come to the Supreme Court to learn about the American judicial system from the justices themselves.

He spoke of a unique experience in which his counterpart in the Russian judiciary had come to learn about the Court and its functions. During his visit, the Russian judge and his party visited the Arlington National Cemetery. While there, they were noticed by a tour guide and were invited to lecture a group of schoolchildren on the importance of the judiciary in a democratic government. This same Russian judge had once attended a conference in Europe and was asked which judicial system the newly democratic Russian courts would most like to emulate. The judge said that he would like to see a Russian judiciary modeled after the American system. A member of the European audience said, "Well, if all you wanted was a Coke, you didn't need to come to Europe to get it." The judge responded that he didn't much like Coke and said, "I like my wine French, my beer German, my vodka Russian, and my judicial institutions American."

Judicial Restraint

Although he was reluctant to comment on specific cases, Justice Roberts stridently reinforced his views on judicial restraint. When asked if there were any circumstance when a judge might rule contrary to the law simply because to do otherwise would be morally repugnant, Justice Roberts answered emphatically, "No." He said that this was often most difficult in criminal cases where the law demanded that an obviously guilty person go free. In these circumstances judges were to follow the law and not engage in

results-oriented jurisprudence. This theme of restraint echoes a theme he had articulated in his confirmation hearings, where, in a discussion on judicial checks on legislative power, he had said, "The constitutional limitation doesn't turn on whether it's a good idea. There is not a 'good idea' clause in the Constitution."

Civility and Family Life

Commenting on the civility of the Court, Justice Roberts observed that he had never heard a voice raised in conference. He later commented that most Supreme Court decisions were unanimous, and he said that he would often try to partner justices to work together on a case where they could find common ground if they had disagreed on a previous case.

When asked about balancing work and family life, Justice Roberts tried to disabuse students of the view that there are easy ways to achieve such an equilibrium. "It is hard," he said, and suggested that one approach was to establish firm ground rules at the outset of your career. "Dinner at my house is at 6:30 p.m.," he said, noting that, while he was usually present, he often returned to work when dinner concluded.

Conclusion

Perhaps the most enlightening aspect of the event was the opportunity to take a measure of the character of a chief justice of the Supreme Court by listening to his thoughtful historical analysis of constitutional issues and observing his dispassionate and respectful response to student questions. Chief Justice Roberts' intelligence, affability, and indefatigable commitment to constitutional principles undoubtedly left a lasting impression on those present.

—Stephen Mouritsen

J. Reuben Clark Jr. DVD Available

The Legacy of J. Reuben Clark captures the compelling story of the life of J. Reuben Clark Jr., namesake of the BYU Law School. The film takes the viewer from Clark's earliest childhood days in the farmlands of Grantsville, Utah, through his law school education at Columbia University and his years of government service.

While Clark was serving as ambassador to Mexico, President Heber J. Grant issued him a call to return to Salt Lake City and serve as a counselor in the First Presidency. The calling came as a surprise, as the 61-year-old ambassador had never served as a bishop or a stake president. Dutifully, J. Reuben Clark heeded the call and served nearly 30 years as a counselor to three LDS presidents.

Featured interviews include prominent biographers and scholars, relatives of J. Reuben Clark, and commentary from the First Presidency of The Church of Jesus Christ of Latter-day Saints.

The 35-minute DVD (\$14.95) may be ordered online at <http://www.jreubenclark.org/> or by calling 1-800-963-8061.



Law Society Member Now Australian Federal Magistrate



Susan Purdon Sully, Brisbane, Australia, has been appointed to the Federal Magistrates Court of Australia, the highest legal position obtained by a member of the Church in Australia.

The court's jurisdiction includes family law, bankruptcy, consumer protection and trade practices, privacy, and industrial law. Prior to her appointment she was a partner in a Brisbane law firm practicing in family law and alternative dispute resolution.



David Dominguez

David Dominguez Receives Ethics Award

David Dominguez was presented the Excellence in Ethics Award by the Center for the Study of Ethics at Utah Valley State College (Utah Valley University as of July 1) on September 19, 2007, as part of the college's annual Ethics Awareness Week.

"The award is presented annually by the Ethics Across the Curriculum Board to an individual from the state of Utah who displays exemplary ethics in their life," said Dr. David Keller, director of the Center. "David Dominguez has demonstrated a deep understanding of ethics and morality in his many hours spent serving the community in a variety of capacities, most notably with justice and fairness issues."

Professor Dominguez received his BA with honors from Yale University in 1977 and his JD from the University of California, Berkeley, in 1980. He teaches labor law, individual employment rights, criminal law, community lawyering, and advanced community lawyering at the J. Reuben Clark Law School.

Professor Dominguez is well known for providing legal services to the poor and rich alike. He says there is a growing concern in America that justice is an expensive commodity that only the rich



Kif Augustine-Adams

can afford; he notes that while it has always been a problem for the poor to access lawyers and the legal system, "it is now the case that the middle class cannot afford the financial cost of retaining legal counsel." The name given to the effort to address this growing malady is the Equal Access to Justice (EAJ) movement.

To strengthen the EAJ movement, Dominguez has developed courses in community lawyering, through which "lawyers learn that the answer is found not only in the obvious solution of increasing the supply of affordable legal services but also in diminishing the demand for legal services."

Dominguez contends that community lawyering may be a good alternative for solving legal issues. Rather than asking attorneys to provide goodwill and generous services, and waiting until enough lawyers decide to donate enough hours, community lawyering "takes the initiative to structure activities and opportunities for the low income, the middle class, and the wealthy to be equally respected participants in describing local concerns; fashioning community-based, user-friendly, inexpensive methods for dealing with those concerns; and deciding the appropriate resolution." He believes that community lawyering could prevent legal problems before they happen.



James R. Rasband

Professor Dominguez's latest articles published in nationally recognized journals are entitled "Community Lawyering in the Juvenile Cellblock," "Equal Justice from a New Perspective," "Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering," and "Community Lawyering."

Past recipients of the Excellence in Ethics Award are Michael Zimmerman, chief justice of the Utah State Supreme Court; Irene Fisher, founding director of the Bennion Center; the late Delmont Oswald, executive director of the Utah Humanities Council; Jay Jacobsen, MD, director of Medical Ethics for LDS Hospital and the University of Utah Medical Center; Karen Ashton, philanthropist; Omar Kader, president of Pal-Tech; His Holiness the Dalai Lama; Pamela Atkinson, founder of Pamela Atkinson Homeless Trust Account; Dr. Bill Pope, philanthropist; Jon Huntsman Sr., philanthropist; and Michael K. Young, president of the University of Utah.

Kif Augustine-Adams Appointed Law School Associate Dean

Professor Kif Augustine-Adams has been appointed as associate dean for Research and Academic Affairs at the Law School. She replaces James Rasband, who was

appointed as associate academic vice president for faculty at the university. Her responsibilities will include promoting and encouraging faculty scholarship and supervising student academic matters and cocurricular programs.

Augustine-Adams received a law degree from Harvard University in 1992, after graduating from BYU in 1988. She practiced with Covington & Burling in Washington, D.C., from 1992 to 1995, at which time she joined the faculty at the J. Reuben Clark Law School. Her research interests are mainly citizenship, immigration, and gender issues. Law classes she has taught include Social Policy and Feminist Legal Thought.

James R. Rasband Named New Associate Academic Vice President for Faculty

BYU law professor James R. Rasband was appointed as the university's new associate academic vice president for faculty on January 14, 2008.

A BYU alumnus, Rasband received his juris doctorate from Harvard University in 1989. He was a law clerk in the Ninth Circuit U.S. Court of Appeals and an attorney for Perkins Coie in Seattle before joining the faculty at the J. Reuben Clark Law School in 1995, where he is the Hugh W. Colton Professor of Law. He has served as associate dean for research and academic affairs since 2004.

Rasband's primary areas of expertise are public land law, water law, wilderness and grazing law, regulations covering the national parks and national monuments, and international environmental law.

He is coauthor, along with James Salzman at Duke University and Mark Squillace at the University of Colorado, of the law school casebook *Natural Resources Law and Policy*.

Class Notes

E-MAIL YOUR PROFESSIONAL NEWS TO
copel@lawgate.byu.edu

CLASS OF 1977

Annette W. Jarvis, a shareholder and member of the executive committee of Ray Quinney & Nebeker P.C., was honored with the Large Company Transaction of the Year Award from the Turnaround Management Association at its annual convention in Boston, Massachusetts, on October 19, 2007. Annette received this award in recognition of her work as lead bankruptcy counsel in the Chapter 11 cases of USA Commercial Mortgage Company, USA Capital First Trust Deed Fund LLC, USA Capital Diversified Trust Deed Fund LLC, USA Capital Realty Advisors LLC, and USA Securities LLC, filed in Las Vegas, Nevada, in April 2006.

CLASS OF 1978

Ron Gardner was appointed to the u.s. Access Board, an independent federal agency devoted to accessibility for people with disabilities, by President George W. Bush on December 13, 2007. The four-year appointment will give Ron, who was born blind, a national pulpit to address how better access can be given to people with disabilities. He has taught business law as an adjunct professor at BYU for 14 years.

CLASS OF 1979

Jerry R. Rigby was reappointed by Idaho Governor Butch Otter to a fourth four-year term to the Water Resource Board of the State of Idaho. He was also elected chair of the same Idaho Water Resource Board.

CLASS OF 1980

Chris Cannon is seeking the Republican nomination in Utah's Third Congressional District.

CLASS OF 1981

Carolyn Colton has retired from Marriott International, Inc., and is enjoying traveling in Scotland, Thailand, Brazil, and France and spending time with family and friends.
G. Michael Westfall is a district court judge in the Fifth Judicial District for the state of Utah. He is currently serving as the presiding judge in the district as well as serving on the ethics advisory committee.

CLASS OF 1984

R. Lee Warthen is the author of "Legal Research in the State of Deseret and the Utah Territory, 1847-1896," published in *Prestathood Legal Materials: A Fifty-State Research Guide* (2006).

CLASS OF 1986

Scott H. Hansen is serving a four-year term as a state court judge in the Brigham County Courthouse in Blackfoot, Idaho, until the next election cycle in 2010. He was initially selected by the Magistrate Commission to serve as a magistrate judge in November 2004.

CLASS OF 1987

G. Murray Snow was nominated by President George W. Bush as United States district court judge for the District of Arizona on December 11,

2007. He has the support of both Arizona senators for this position. Since 2002, Judge Snow has served on the Arizona Court of Appeals. Prior to that position he was a partner at the Phoenix law firm Osborn Maledon.

CLASS OF 1989

Christopher A. Newton was inducted into the Terre Haute South Vigo High School Hall of Distinction on April 12. The high school is a 5A school with over 2,100 students and opened in 1971. Chris is the first alumnus of the school to become a superior court judge in the state of Indiana. He is currently serving as judge of Vigo Superior Court Division 4 and as chief judge of the Vigo Superior Courts.

CLASS OF 1990

Karl M. Tilleman was appointed managing partner of Steptoe & Johnson LLP, Phoenix, Arizona. He will continue to practice as a partner in Steptoe's insurance coverage and bad-faith groups with a focus on litigating a broad range of insurance, antitrust, intellectual property, business torts, environmental, and other commercial disputes.

CLASS OF 1991

Tani Pack Downing has been appointed by Utah Governor Jon Huntsman as deputy chief of staff and general counsel. Tani had previously served as executive director of the Utah Department of Workforce Services.

David Leavitt is seeking the Republican nomination in Utah's Third Congressional District. He and his wife, Chelom (also '91), run the Leavitt Institute of International Development, which teaches the concept of the American jury trial to Ukrainian law students in Kiev, Ukraine.

CLASS OF 1992

Hal D. Baird is an Army Reserve JAG Corps lieutenant colonel currently on active duty at Camp Victory in Baghdad, Iraq. He was posted there from his position at Fort McCoy, Wisconsin, a power projection platform mobilizing guard and reserve soldiers in support of the ongoing global contingency operations. He left active duty with the army in 1998, returning to Salt Lake City to practice in the area of intellectual property law with former classmate Jack Pate at Pate Pierce & Baird. Incidentally, the actual office where Hal worked at the Pentagon prior to leaving active duty was destroyed in the terrorist attack on September 11, 2001.

David N. Brizzee joined the State Department in October 1994 as a foreign service officer. Since that time, he has been stationed in London and Seoul and has spent two years (2002-2004) in Islamabad, Pakistan, as deputy consul general. He then went to Hong Kong and has just finished a tour in Shenyang, China, as chief of the consular section. His next assignment will be for one year as a provincial action officer in Hilla, Iraq.

Christopher B. Chaney became the deputy director for the Bureau of Indian Affairs—Office of Justice Services in August 2005. The office supports tribal law enforcement, tribal court, and tribal corrections programs and directly provides law enforcement, court, corrections, training, and internal affairs services for tribes that do not have their own programs.

Rodney A. Cortez was appointed to San Bernardino County Superior Court by Governor Arnold Schwarzenegger on November 3, 2006. Rodney, of Rancho Mirage, has served as a deputy district attorney for the San Bernardino County District Attorney's Office since 1996. Previously, he was an associate with the

law firm Tuverson & Hillyard and a contract attorney for Lorber, Volk, Greenfield & Blick. He fills the vacancy created by the death of Judge Roberta McPeters.

Vicki Huebner has been working in legal education for the past 12 years. She currently serves as the assistant dean for Law Career Services at Santa Clara University School of Law in Silicon Valley, California. In 2007 she was one of 25 people selected to receive a Fulbright Fellowship to participate in the u.s.-Germany International Educational Administrators program in Berlin, Germany.

CLASS OF 1993

Galen L. Fletcher is coauthor of "Territorial Legal Research for Nevada," published in *Prestathood Legal Materials: A Fifty-State Research Guide* (2006).

CLASS OF 1994

Patrick Shen is now working with the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-related Unfair Employment Practices. Prior to his new employment, Patrick served as director of government relations for Fragomen, Del Rey, Bernsen & Loewy LLP in Washington, D.C.

CLASS OF 2000

Manuel Metzner, LL.M., has been newly appointed counsel at Cleary Gottlieb Steen & Hamilton LLP. He has worked as an associate in the company's Frankfurt and New York offices.

Jason S. Nichols was recently named shareholder at Parsons Behle & Latimer. Jason is a member of the real estate, banking, and finance department and concentrates his practice on all aspects of real property law, including acquisitions and dispositions, development, leasing, finance, land use, and zoning.

CLASS OF 2003

Shawn P. Bailey recently joined Bearson & Peck in Logan, Utah. Since graduation, Shawn has worked as a law clerk for the u.s. Court of Federal Claims, a trial attorney in the u.s. Department of Justice/Civil Division, and a litigation associate at Greener Banducci Shoemaker in Boise, Idaho. Shawn argued and won an appeal before the Idaho Supreme Court this year.

CLASS OF 2004

Nicole Pyne joined the Salt Lake City law offices of Raymond J. Etcheverry. Nicole is a member of the litigation department and concentrates her practice on general commercial litigation.

CLASS OF 2005

Ron Fuller joined the S. J. Quinney Law Library at the University of Utah as an assistant law librarian. Prior to this position, he was a law clerk for Judge Randy Olsen in Alaska. In December he and his wife, Kathryn, had their second daughter, Sophie, joining their oldest, Lilly.

CLASS OF 2006

Rebecca Ryan Clark submitted an amicus brief on behalf of two Massachusetts domestic violence prevention organizations. The Massachusetts Supreme Judicial Court upheld the authority of courts to protect victims of abuse even in the absence of personal jurisdiction over the defendant. To support its ruling, the court adopted the reasoning of Rebecca's brief, which stated that personal jurisdiction is not required to issue protective restraining orders against nonresident abusers, as long as the restraining order imposes no affirmative obligations on the defendant.

In Remembrance

Gene Jacobs, Retired Professor

Retired BYU law professor Eugene Brown Jacobs died in Provo on November 25, 2007. He was 84 years old and had suffered from health problems for years.



Upon returning from active duty in the Naval Reserve during World War II, Gene was admitted to the University of California, Berkeley, where he received an undergraduate degree. He later received a law degree from the Boalt School of Law. He then worked as deputy attorney general under Pat Brown at the California Attorney General's office in San Francisco.

In 1960 he began working for the Los Angeles Community Redevelopment Agency. Within a few years he opened his own office and took on dozens of major southern California cities and agencies as clients, having represented and advised more than 80 cities and counties as "the father of California redevelopment law." In the 1970s, under the Carter administration, he set up the framework for the Urban Development Action Grant program.

In 1980, after retiring from his California law practice, he joined the faculty at the J. Reuben Clark Law School, where he taught redevelopment and real estate law classes until 1988. While there, he organized and established funding for the student-run Government and Politics Law Society.

Jason Coles, Law School Alum

Jason Coles, a 2003 graduate of the J. Reuben Clark Law School, was killed in a ski accident on December 17, 2007. Authorities believe he hit a tree while skiing. He was married to



Laurie Seal Coles, also a 2003 graduate of the Law School, and father to nine-week-old Lily Brynn. The family is accepting donations to Lily's college savings plan. Checks may be made payable to "UESP Lily Brynn Coles" and sent to Lily Brynn Coles, P.O. Box 981777, Park City, Utah, 84098. A memorial account for Lily has been established in the name of Jason Coles at zionsbank.com or at any Zions Bank.

Three Weeks of Love

by Scott Brown

I FRANTICALLY PACKED MY LUGGAGE. MY WIFE AND I WERE OFF TO RUSSIA FOR three weeks to adopt a little girl named Anna. We are genetically incapable of creating girls (we have four boys), and when we first saw a picture of Anna, our hearts melted. Now, after two and a half years of frustrating setbacks and empty promises, we were realizing our dream.

I was on leave from work, but like a good lawyer I still brought along my laptop and a CD loaded with documents. I planned to whittle away the long hours in our hotel by catching up on a few projects.

On the flight over I pulled out my laptop, eager to get started. I reached into my bag for the CD but found nothing. I searched again without luck. I wondered if I had mistakenly packed the CD in my suitcase, but when we unpacked the luggage in Pskov—a small town that is a bumpy four-hour car ride south of St. Petersburg—the CD was nowhere to be found. Concerned, I contacted a relative back home who confirmed that I had left the CD in my bedroom. I also confirmed that UPS and FedEx did not deliver to Pskov and that I couldn't log onto my firm's network from any of the town's three Internet cafés.

For the first time since beginning law school nine years earlier, I had three weeks of no school, no work, and no billing to do. I was frightened.

But an unforgettable experience ensued. Almost as soon as we arrived, we were whisked along an even bumpier road to an even smaller town called Veliki Luki, where Anna lived in an orphanage. Neglected as a baby, she and her older brother were placed in separate orphanages when she was 18 months old. My wife and I began the adoption process when she was two. We were allowed to visit her once when she was three and a half—a rugged, five-day trip that included only one 30-minute visit. We waited another 18 anxious months before we were finally invited back. My father- and mother-in-law were with us as well; they were adopting Anna's older brother.

Upon our arrival at the orphanage, Anna immediately recognized us as “mama” and “papa.” She was nearly five. Her head was shaved for lice and covered in scabs from poor nutrition, but she looked as beautiful to us then as she does now over a year later.

The day after we visited her, she was brought to Pskov for the court hearing. When she arrived, my wife and I were already before the judge, answering questions about ourselves, our four sons, our home, and our reasons for adopting Anna. The judge was shocked that parents of four children would want another child!

Prior to the hearing, I envisioned a judge suspicious of Americans adopting a Russian child. I was wrong. The judge was a humble and kind woman. She did not have much; her chambers were cramped like a small cubicle, and her courtroom was devoid of electronic equipment. At the end of the hearing, the judge smiled as she looked at my wife and me and announced that we were now the parents of the little girl whom we knew so little but loved so much. Anna greeted us as we walked out of the courtroom, springing into our arms as if she had always been ours.

I have exited courtrooms many times, but never as I did that day, full of peace and happiness.

The next 19 days in Russia were unforgettable. As expected, we were cooped up in a small hotel room, strangers to the country and to our new little girl. Though there were plenty of hours I could have been typing away on my laptop, I used it sparingly and even then only as a DVD player for *Cinderella*. Anna didn't care too much about DVDs, but she gratefully wolfed down every meal, examined and played with every toy over and over again, and thoroughly enjoyed every hug.

At the end of the three weeks, we brought Anna home to our anxiously awaiting sons. My wife and I finally had our daughter. Our boys finally had a sister. And our daughter finally had a family.

The *Clark Memorandum* welcomes the submission of short essays and anecdotes from its readers. Send your short article (750 words or less) for “Life in the Law” to wisej@lawgate.byu.edu.

Clark Memorandum

J. Reuben Clark Law Society

J. Reuben Clark Law School

Brigham Young University

