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Clark Memorandum: Fall 2012

J. Reuben Clark Law Society

BYU Law School Alumni Association

J. Reuben Clark Law School

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CLARK MEMORANDUM

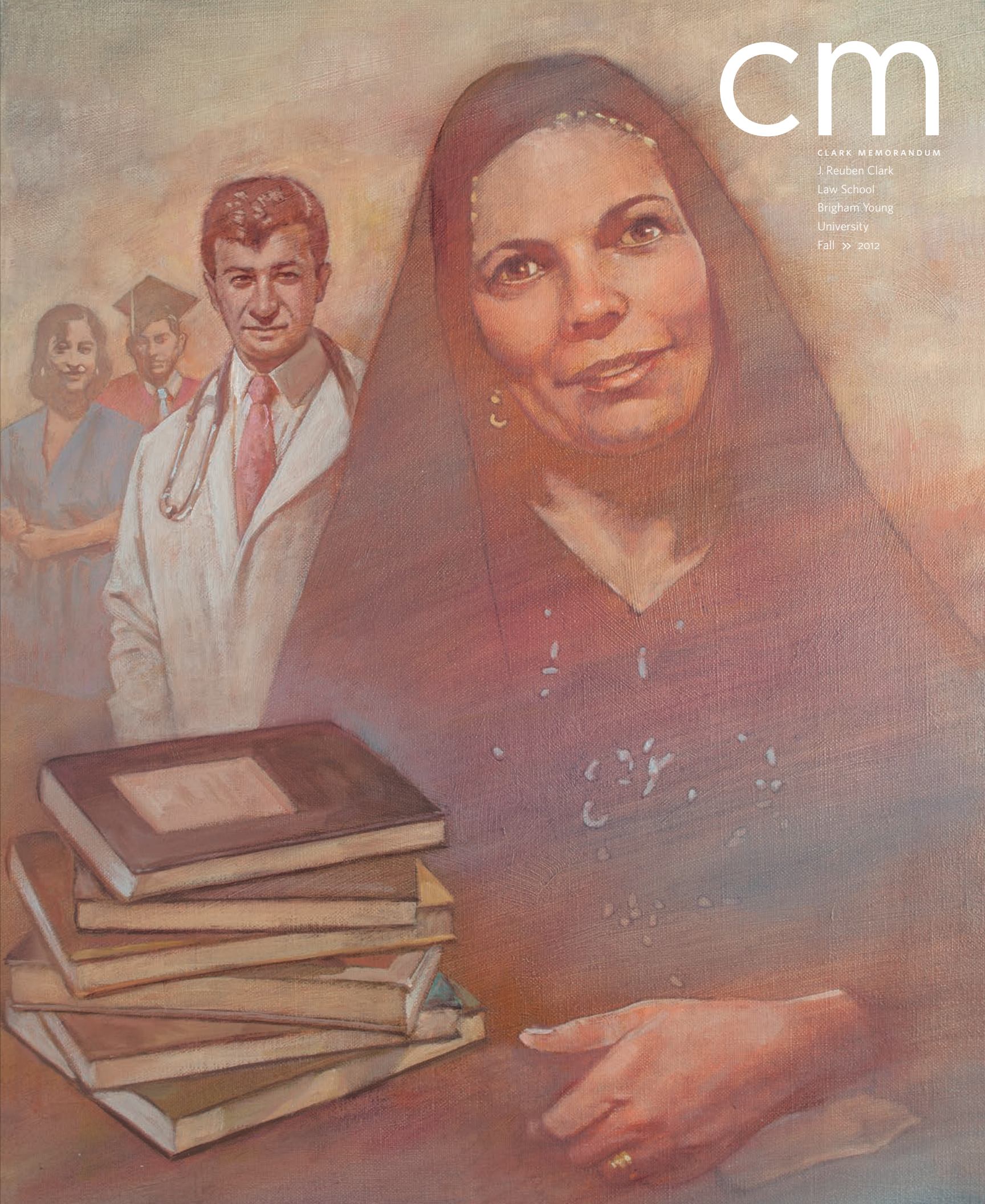
J. Reuben Clark

Law School

Brigham Young

University

Fall >> 2012



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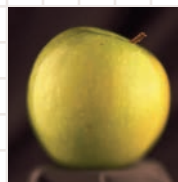
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DEAR ALUMNI AND FRIENDS,

The *Clark Memorandum* is a unique law school magazine. This issue, like all issues, will be shipped far beyond the alumni of BYU Law School to members of the J. Reuben Clark Law Society and to other friends all over the world. The Law School also publishes an annual report, which focuses on our alumni, but the *Clark Memorandum* has always had a broader purpose to provide its readers with some of the most thoughtful efforts by LDS lawyers and lawyers of other faiths to grapple with how to integrate a life of religious faith with commitment to professional ideals. Over time, the pages of this magazine have built up quite an architecture of ideas.

This building project, not only in the *Clark Memorandum* but also in the traditional legal scholarship that the BYU Law School faculty produces, is at the core of the Law School's mission. As lawyers, we understand that writing is a critical part of the thinking process. I've always appreciated the story of the man who, when asked what he thought about a particular topic, responded, "I don't know. I haven't written about it yet." Most of us have had the experience where a particular brief or letter just won't write because our ideas can't survive the discipline of the clear exposition demanded by the written word.

Legal scholarship, with all of its footnotes that sometimes drive us crazy, is a high form of this process of thinking by writing. Producing a published article that grapples with a complex legal theory or policy problem demands a level of analytical rigor that simply isn't required in even the most sophisticated conversation. Even brilliant oral arguments are fleeting and transitory. Oral argument may carry the day in a particular setting, but it is unlikely to have influence beyond the original circle of listeners.

Recognizing the power of memorializing ideas in writing, it will not be surprising that one of our goals as a law school is to produce influential and enduring legal scholarship. I am proud of our faculty's record in that regard, and I was pleased that, at our annual Founders Day Dinner in August, Elder Dallin H. Oaks praised the "professional and public impact" of the faculty's scholarly work. The last couple of years have seen an impressive array of faculty publications appearing in some of the top law journals in the country. Even more satisfying than stellar placements, faculty scholarship is being cited and, as Elder Oaks noted, is influencing the trajectory of law and policy.

If you have a minute, I'd encourage you to visit our Law School website and take a look at the faculty's scholarship. A full list of publications can be viewed through the "Faculty" tab of the website under the "Faculty Research" link. In the meantime, I hope you enjoy the writing and thinking in this issue of the *Clark Memorandum*.

Warm regards,



JAMES R. RASBAND



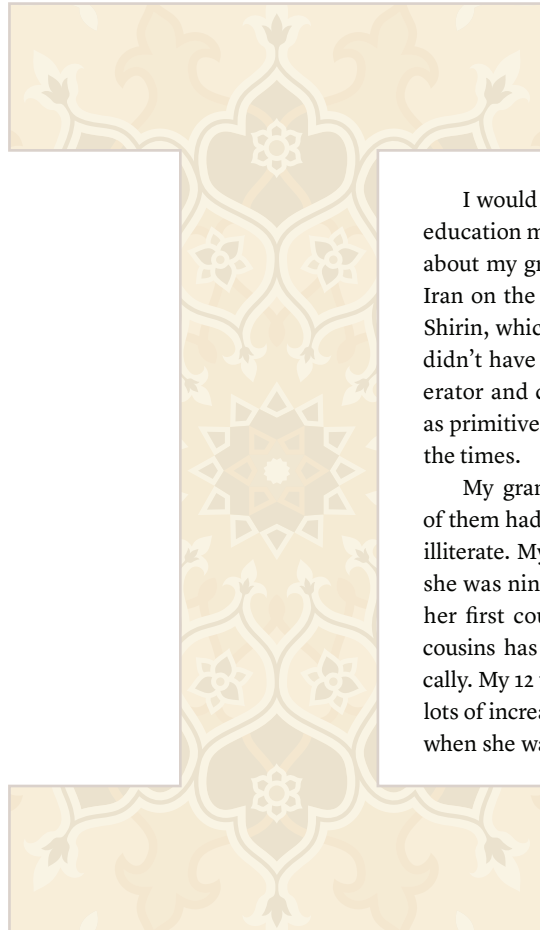
*This
speech was
given at
a Women in
the Law
recruitment
lunch
for female
students
on March 12,
2012.*

BY MEHRSA BARADARAN¹



ILLUSTRATION BY ROBERT BARRETT





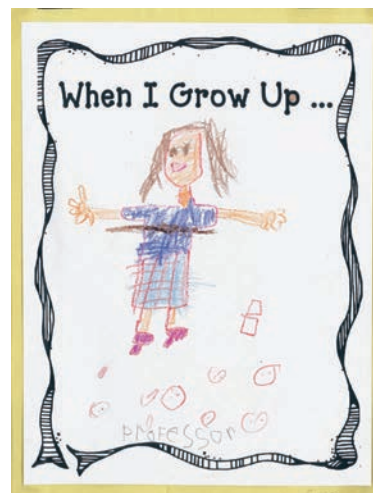
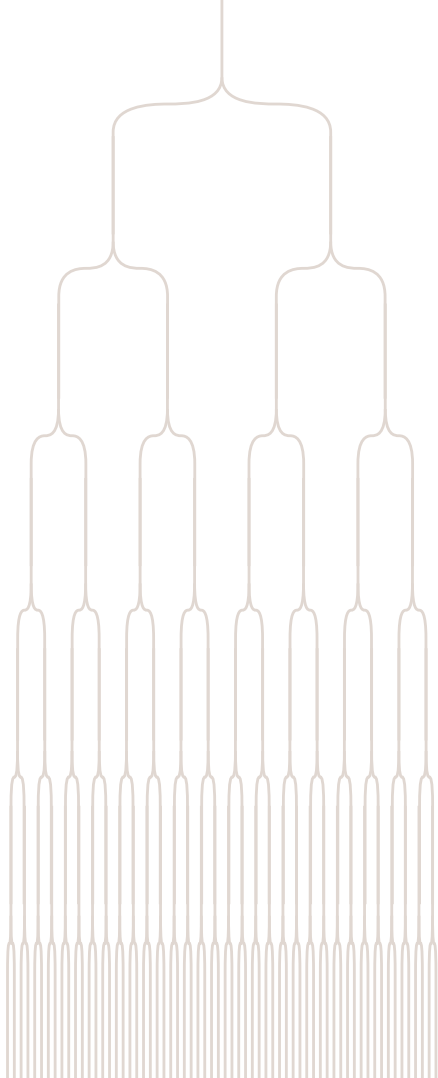
teach banking law, and I would say that what makes banks unique institutions is that they are money multipliers. Money goes into a bank, and when the bank lends and leverages that money, it multiplies and increases much faster than it otherwise would.

I would like to make the case that, similarly, women are education multipliers. I will illustrate this point by telling you about my grandmother Mehri. She lived in a remote part of Iran on the Iraqi border in a primitive town called Ghasreh Shirin, which deceptively means “Sweet Castle.” Her family didn’t have electricity or running water. They had no refrigerator and cooked over a fire stove. The rest of Iran wasn’t as primitive, but Ghasreh Shirin was off the map and behind the times.

My grandmother’s relatives worked the land, and none of them had received a formal education; many of them were illiterate. My grandmother was given away in marriage when she was nine years old to my grandfather, who was 20—and her first cousin. (The fact that my grandparents were first cousins has had absolutely no negative effect on me genetically. My 12 toes have actually come in quite handy in my life—lots of increased stability.) My grandmother had her first child when she was 13, and then she had nine more, eight of whom lived. My father was her third child, her first son, and her favorite.

My grandmother never entered a classroom—obtaining an education was not something women did at that time and in that place. But she was determined to learn to read, so she taught herself how from the only book in the house: the family Qur’an. She would sit for hours memorizing passages in the book until she was fully literate. She must have worked hard at this, because the Qur’an was in Arabic, which is very different from spoken Farsi. My dad said that she had most of the book memorized and would recite passages from it.

My grandmother also taught herself how to make beautiful Persian rugs. My aunts say that she would go into town once a month and stare at the patterns on the rugs; then she would come home and replicate them.



*Picture drawn by
Cyra Baradaran Bybee
in kindergarten,
showing what she wants to
be when she grows up.*

Learning to read motivated my grandmother to educate her children. She was determined to send my dad to school, even against the wishes of my grandfather—who was a great and kind man but who was not yet sold on the value of education. My dad would sometimes hide in the outhouse and study for his exams against his father's wishes but with his mother's help and support.

My dad became the first person in his extended family to graduate from high school. He became a schoolteacher, and then he decided he wanted to be a doctor. He took the qualifying exams and was accepted into the University of Tehran—a difficult school in which only about 10 percent of the entering class graduate after six years. My father studied hard and became a brain surgeon. To pay for school he worked for the Shah's police as a surgeon and then later for the Islamic Regime, where he had to work on the front lines of the long war with Iraq. At one point during the bloody war, he was performing about 20 brain surgeries per day.

Then my father sent his two little brothers to graduate schools—one to a school in

Turkey and the other to a school in Iran. He even sent one of his little sisters and several of his nieces and nephews to school. He married a college-educated woman: my mother graduated with a degree in economics from one of Iran's most prestigious universities.

Most of my family eventually moved to Tehran, and education became a part of their lives. All of my female and male cousins, who live in Iran, have college degrees—and most are professionals. I have three female cousins who are doctors and other cousins who are engineers, dentists, and architects.

In my immediate family, one of my sisters is a law professor and the other is a doctor. My little brother will be entering BYU as a freshman this fall with hopes to become a doctor.

I credit all of my family's educational achievements to my grandmother, who was an education multiplier. She took the opportunity she had to learn—the one book in her home—and multiplied it to create a posterity of educated professionals. It took just one generation for her to create this heritage. My grandmother passed away many years

ago, before I could meet her, but I hope she is now fully aware of her profound influence on our lives.

And her legacy lives on. I have three daughters. My oldest daughter, who is in kindergarten, created a book about herself. On the last page she drew a picture of a woman behind a podium—what she wants to be when she grows up. She says she wants to be a professor at BYU. I hope that all of my girls continue in the tradition of education started by my grandmother and that they pass it on to their children as well. I hope that you do, too.

My father kept studying throughout his life. In fact, he had to complete his education all over again when we immigrated to America. He was 40 years old and had to start from scratch with no money and a huge language barrier. He worked diligently, and 10 years later he reestablished his medical practice in America. Every mental picture I have of my father—from when I was growing up and even now—is of him reading something.

My parents were adamant about education. These are the wise and inspiring words



Mehrsa Baradaran's grandmother Mehri (far right) with other family members.

my dad told me about going to law school: “Mehrsa, why don’t you want to be a doctor?”

Allow me now to sell you on why you should come to BYU Law School and get a JD—or, as my dad would call it, an ND, for “not doctor.” I also want to discuss a few of the issues you women might have, mainly how to manage motherhood and a career. If you aren’t conflicted about this, that’s great, but I know from talking to many women in your position that this is a major—if not *the* major—issue some of you deal with. And I similarly dealt with this issue when I was deciding what I wanted to do.

Let me also lay a couple of myths to rest: First, somehow you need to devise a plan for your life right now in order to be successful. Truly, life will not always unfold as you expect it to. And second, you can do it all. You *can* do it all, just not at the same time and not without making some sacrifices.

The “Life Plan”

Before when I saw successful professionals with wonderful families, I assumed that they had always known where they were going and that they had followed a well-designed plan. I have since discovered that this is not the case for most people. Most successful people

stumble a few times before they reach their destination. I am not sure what my destination will be, but my life thus far has gone from one prompting or opportunity to another. Before I was a “not doctor” student, I studied pre-med. Then I felt like I should go on a mission, so I did. Then I met my wonderful husband, and I got married. Afterward I decided that I wanted to go to law school, and I did. I had kids, and I am still just making sure I am worthy and qualified to take all the opportunities that present themselves to me. Meanwhile, I have managed to get both a job and a family that I love.

But here is one thing that I always did—and a bit of advice: try your hardest to do well in everything you do. That’s how you give yourself options and the ability to leap from one plan to another as your life unfolds.

Let me be specific about what I mean by working hard. It means studying hard—even if you need to study in an outhouse—getting good grades, doing well at work, and working hard to become the person God wants you to be.

In all of my professional life I have never seen success that didn’t abide by the law of the harvest, meaning that you cannot reap what you do not sow. You cannot ace your classes and get a great LSAT score or be really good

at anything without putting in lots and lots of effort—and sacrificing some leisure time.

So it’s great if you do have a plan for your life, but if you don’t, don’t worry—just do really well along the way and look for opportunities.

Having It All

Ecclesiastes 3:1 reads: “To every thing there is a season, and a time to every purpose under the heaven.”

There is a season to work, a season to learn, a season to raise children, and so on. And sometimes those seasons overlap, and I am not going to lie to you, sometimes it can be difficult to manage it all.

It is absolutely crucial to have a supportive spouse to make it all work. Another added bonus is having good babies.

As some of my students and colleagues can attest, my baby, Ramona, came to school with me for the first year and a half of her life. She would sit on my office floor and play and take naps, and I would feed her in between student meetings. Sometimes I would have student meetings in a whisper so as not to wake her up. I was very blessed that she was a late crawler and a late walker and hardly ever cried.



Mehrsa's father, Asadollah (far left), and his mother (second from the right) in Iran.

I have worked full-time and part-time, and I have stayed home with my kids. I am still trying to figure it out—one decision at a time—like when I quit my Wall Street job because I just couldn't stand being away from my newborn so much. I believe that the Lord has guided me each step of the way as I navigate motherhood and my career. And He will guide you too.

I have friends who have handled their careers in a variety of ways—taking a little or a lot of time off or finding flexible careers. Others who have no interest in working outside the home still use their education in a variety of ways to enrich their families and communities.

So I guess I don't have an answer to this motherhood-career dilemma because I am still in the midst of it. But there are many examples of women who are figuring it out one way or another. I will tell you that you will never regret your education.

Gifts of a Law Degree

You will especially not regret a BYU law degree. What a gift to be able to graduate from law school without much debt! I was fortunate enough to do that (though not at BYU), so when I wanted to quit my job

and stay home with my children, I had that option.

Another question you might have is, why law? My first year of law school was the most mind-expanding time of my life. Studying the law teaches you how to think critically, analyze problems, and articulate your viewpoints. Learning law is really a chance to peek at the wizard behind the curtain. It demystifies what is so elusive to so much of the world. It puts you in a position of power—true power—to lift burdens.

No matter what you do with your life, the skills you learn in law school will help you. A law degree is the most flexible advanced degree. I have friends with law degrees who work in government, business, and law firms. Some do public service work and others stay home with their children and use their law degree to teach their children about the world.

If you are trained well and are good at what you do, you can do a variety of meaningful part-time and contract work without working full-time. And even in those seasons of life in which you are not working at all, you can still be useful to family, friends, and your community by participating on boards, giving advice, and lending a hand to the disadvantaged or marginalized.

I strongly believe that happiness and growth come only from continued learning. When you go to law school you not only learn during those three years, but those three years lay the groundwork for learning for the rest of your life. I always tell my students that law school is such a luxury—I see them walking around talking to each other about Locke and Montesquieu and what they *really* think about Constitutional originalism vs. legal realism, and I think what a privilege it is to be able to immerse yourself in new ideas for three years.

Sometimes I think about my grandmother, who could never have dreamed of such an opportunity but still did the best with what she had.

What a blessing you and I have to learn and be educated. I hope that as women we seek those opportunities, show gratitude for them, and become education multipliers.

NOTE

- 1 Professor Mehrsa Baradaran researches and writes on banking regulation and administrative law. She taught classes in banking regulation, property, secured transactions, and administrative law at BYU Law School from 2009–2012.

INTRODUCTION

AND

PRINCIPLES

{ THE HONORABLE JUSTICE WILLIAM A. TILLEMAN }

OF



G R I T Y

T H E

{ PHOTOGRAPHY BY BRADLEY SLADE }

T I C E

L A W¹

In 2009 the Honorable Justice William A. Tilleman was appointed to the Court of Queen's Bench and, ad hoc, to the Court of Appeal in Calgary, Alberta, Canada. Justice Tilleman graduated magna cum laude from BYU Law School in 1986. The following is from an address given at the first Canadian JRCLS forum in Banff, Alberta, Canada, in October 2011.²

E

ven if lies are protected constitutionally by free speech, misleading people is a failure of integrity. We should never forget that our word is our bond and that telling the truth is how we build relationships. As Mark Twain said, “If you tell the truth you don’t have to remember anything.”³ Our word to others still means a great deal—at least to them—and it applies to practicing law; it is better to undercommit and overperform than vice versa.

In a moment I will reference the attributes of being a good lawyer, but I do so with a note of caution: there are certain attributes central to being a good lawyer that are unrelated to being a good person or to doing the right thing—such as being smart or timely (mob bosses can be these two things). But many other attributes are inextricably linked with the idea of being a good person in society—such as being courteous, patient, honest, and so on. This is where having integrity really comes into play. I should point out that judges are not immune; they are affected too.⁴

The attributes of a good lawyer include being smart, courteous, and honest as well as being timely, civil, and patient with everyone—including court staff—doing pro bono work; assisting colleagues; and so on. How are these things tied to the reputation of a lawyer? For a litigator, I suppose the definition would include being absolutely honest with your colleagues when you are before the courts and being honest in your briefs—meaning, for example, that when reference is made to a certain case, ensure that the reference is what the case stands for. Additionally, when a brief refers to the definition found in the contract, make sure that the definition is exactly what the contract in your filed exhibit says it is. (Not surprisingly, judges do look at the cases and the exhibits cited in the briefs, and unfortunately the cases and exhibits do not always say what counsel has told the court.) Also, when counsel drafts an order the judge gave, they should make sure it is the exact order the judge granted. Further, good lawyers never write to a judge without copying the other parties—if they write to a judge at all.

I have many more examples, but the idea I want to portray is that you *do* need to sweat the small stuff when it comes to honesty: honesty and integrity come together when you are acting consistently with principles, even when you are referring to a clause in the contract that you think nobody will look at. There are many opportunities to be even slightly dishonest, and they may seem insignificant on their own, but what is important is that consistency in our thoughts and actions makes us people of integrity.

Do judges assess your reputation? Absolutely they do. I first discovered this when I was a clerk at the court of appeals 25 years ago. After court one day my judge showed me a letter written to him *after* the arguments were in and the case was closed. The judge told me that after that one ill-timed letter, he lost all respect for the lawyer, notwithstanding the lawyer’s good reputation over the past several decades.

Other judges have commented on lawyers’ reputations. Here is a statement made by U.S. District Judge David Winder, quoted by James E. Faust 24 years ago:

The expedient or short-sighted lawyer who fails to fulfill verbal understandings with other lawyers, who presents dubious evidence, who deals loosely with the record, or who misleads judges, is quickly “pegged.” In our bar and every bar there are certain lawyers who achieve the enviable and priceless status of a good name. That status is developed gradually by word of mouth, from judges in the privacy of their gatherings and from lawyers in theirs. And, unlike the litigation you will be handling, be aware that once the verdict of your professional peers is in, there is no formal “due process,” no rebuttal, and no appeal from that verdict.⁵

Integrity shapes the attributes of being a good counsel, but it stands alone and is far more important for the following reason: integrity defines our behaviors on a deeply personal basis. There is a country-western song that tells how far down we have to dig to get to the bottom of our

moral judgments. This song, by Trace Adkins, says: “This ain’t no thinkin’ thing, right brain, left brain / It goes a little deeper than that.”⁶ Like love, integrity goes much deeper; the brain alone cannot solve the problems of either love or integrity.

Shakespeare wrote, “To thine own self be true.”⁷ In this context, how do we find our true self? Acting with integrity links the brain with the spirit, meaning integrity goes right down to the soul. I have heard a speaker suggest that having our soul speak back to us when we make moral mistakes is a good thing; it is healthy because it is a sign of a strong spirit talking to us, and that is both fortunate and a path of correction. That’s exactly how deep morality lies. But, again, it is important because others—and not just judges, lawyers, courts, and society but our families—look to us and expect us to make good decisions. We read from the Bible that “the just man walketh in his integrity: his children are blessed after him.”⁸ Everyone is watching you. As Senior U.S. District Judge Bruce Jenkins profoundly said, “Like it or not, ‘wherever you go, there you are.’ Never forget that you leave your moral fingerprints on everything you touch.”⁹

Years ago, and in a different capacity, I taught ethics at a law school. I always began the class by telling students to close the professional book or code of ethics—at least temporarily. I said this for two reasons: first, because each of us has the power from within to answer any question of a moral nature; and second, because there is a proven frailty with depending too much on a code of ethics reduced to writing and based on a common denominator that would work for the masses. It was not prepared for the weakest among us, as was the well-known health code that we are all familiar with.¹⁰ Integrity is extremely personal—almost intimate in its character. Ralph Waldo Emerson said, “I cannot find language of sufficient energy to convey my sense of the sacredness of private integrity.”¹¹ Going beyond written rules is where the virtue of integrity is cultivated.

Indeed, many professional people who have fallen from high positions did so on the basis of “compliance” with ethical rules either known to themselves or followed based on the advice of professionals, including some of the best. In fact, in North America we are aware of lawyers who use ethical loopholes to justify generally bad behavior.

Intelligent people have suggested a division between professional morality and ordinary or personal morality. How tricky is this distinction? In breaking morality down to its essential parts, don’t we conclude that it is based on honesty in our dealings with our fellow man? Are there really two definitions of honesty, one being more virtuous than the other? Is honesty becoming an on-off switch? Can we really justify moral criteria based on the boardroom or courtroom in which we are standing or with whom? And where does courage fit in—not just as a stand-alone virtue but as the way in which we demonstrate our morality when others depend on us to help them?

In discussing courage and virtue with a judicial colleague, I reviewed comments from moral philosopher Alasdair MacIntyre, who stated:

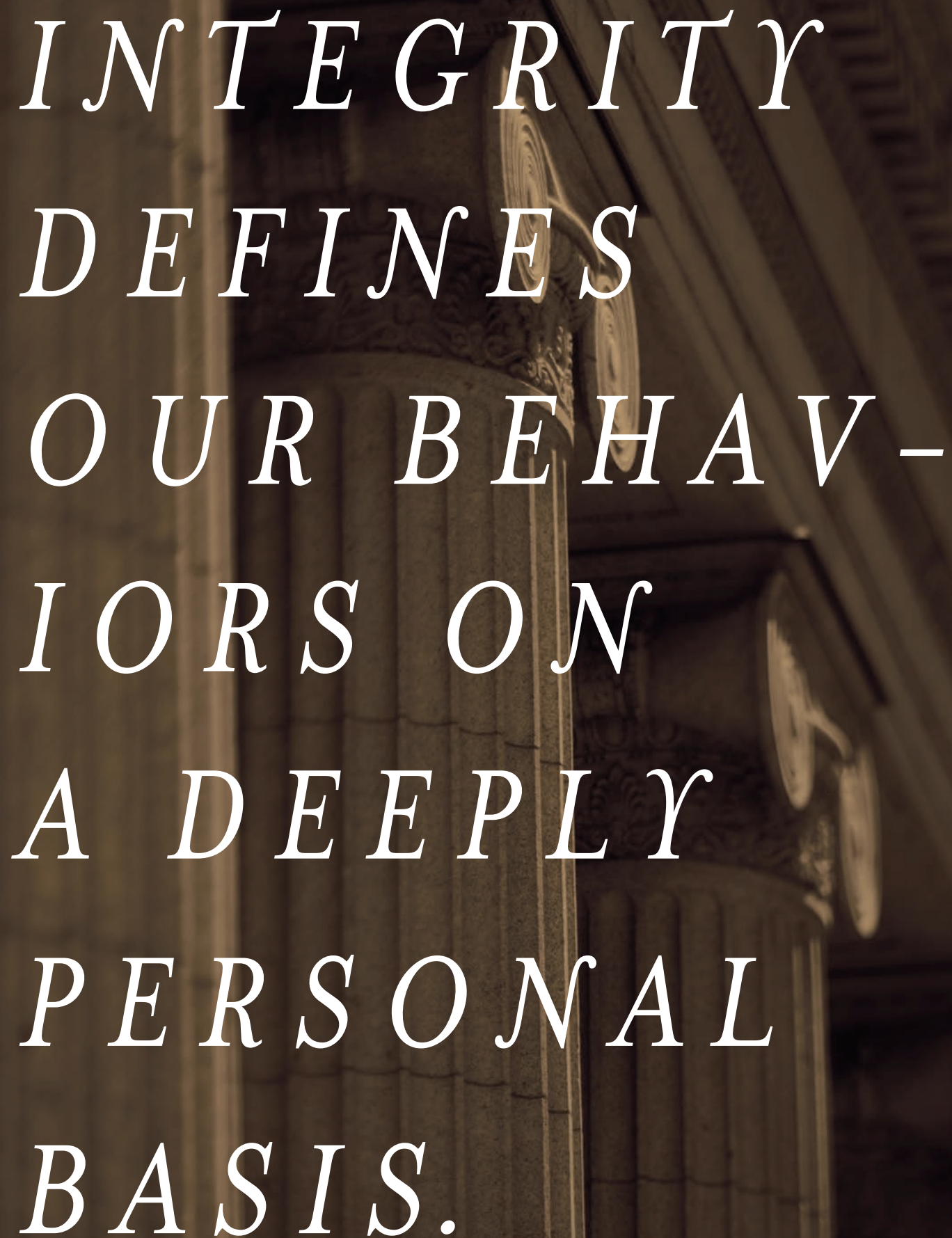
*To be courageous is to be someone on whom reliance can be placed. Hence courage is an important ingredient in friendship. The bonds of friendship in heroic societies are modelled on those of kinship. Sometimes friendship is formally vowed, so that by the vow the duties of brothers are mutually incurred. Who my friends are and who my enemies [are], is as clearly defined as who my kinsman are. The other ingredient of friendship is fidelity. My friend’s courage assures me of his power to aid me and my household; my friend’s fidelity assures me of his will. My household’s fidelity is the basic guarantee of its unity.*¹²

What about the virtue of justice—something that all of us care about every day? MacIntyre also points out how this virtue relates to our profession. He said:

*There is however another crucial link between the virtues and law, for knowing how to apply the law is itself possible only for someone who possesses the virtue of justice.*¹³

I recognize that the word *justice* carries different meanings. Ronald Dworkin spoke about justice and fairness in the law as leading to the law’s integrity. Even if Dworkin and others spoke about justice in the way judges should apply it, the same rings true for lawyers. We are all part of an adversarial system and must all be mindful as officers of the court that in serving others we strive for the application of a just and fair result. Period.

Thus justice and morality are linked. But have we lost this tradition? To quote MacIntyre again:



*INTEGRITY
DEFINES
OUR BEHAV-
IORS ON
A DEEPLY
PERSONAL
BASIS.*

*The virtues find their point and purpose . . . in sustaining those traditions which provide both practices and individual lives with their necessary historical context. Lack of justice, lack of truthfulness, lack of courage, lack of the relevant intellectual virtues—these corrupt traditions. . . . To recognize this is of course also to recognize the existence of an additional virtue, one whose importance is perhaps most obvious when it is least present, the virtue of having an adequate sense of the traditions to which one belongs or which confront one.*¹⁴

For us, what are those key traditions? Are they the same as those things spoken about in Philippians?

*Whatsoever things are true, whatsoever things are honest, whatsoever things are just, whatsoever things are pure, whatsoever things are lovely, whatsoever things are of good report; if there be any virtue, and if there be any praise, think on these things.*¹⁵

We lose those traditions when we lose our courage and truthfulness. Paul knew better. And so do we.

What we need in the world today is a professional reputation linked more to absolute integrity than to having secured, for example, the largest damage settlement, a prominent acquisition, the best jury decision, a multinational closing, a precedent-setting case, a new constitutional ruling, or other similar attorney successes.

Judge Ken Starr echoed these concerns two decades ago at a convocation address in Provo. He said, “Regrettably, the profession is being seen less as a way of serving the cause of justice and more as a way to make a handsome living, perhaps to become rich, and maybe even a little famous.”¹⁶

We do have stellar public service professionals in North America, and I would additionally like to point specifically to former Solicitor General Rex E. Lee. As a student at J. Reuben Clark Law School almost 30 years ago, I spoke to a nonmember professor who told me that he dropped everything and came to BYU’s new law school mainly because of Rex Lee. He admired everything about him. We all did. Rex had the “golden” reputation—by that, and from my current perspective of the bar, I mean that a judge can absolutely trust every word told by that lawyer. Rex Lee’s reputation built the very school that graduated many of us and gave rise to this society.

Granted, there aren’t very many Rex Lees around, but they do exist. Since having this respect for the golden attorney affects so many people in a positive way, why, then, is it so difficult to be on the right side of absolute integrity? Unfortunately, the answer is the growing professional “gray zone” whose swath widens and whose morals narrow each passing day. How do we deal with it? Where do we find our courage? This is what Thomas Jefferson said:

*Give up money, give up fame, give up science, give the earth itself and all it contains, rather than do an immoral act. And never suppose, that in any possible situation, or under any circumstances, it is best for you to do a dishonorable thing, however slightly so it may appear to you. Whenever you are to do a thing, though it can never be known but to yourself, ask yourself how you would act were all the world looking at you, and act accordingly. Encourage all your virtuous dispositions, and exercise them whenever an opportunity arises; being assured that they will gain strength by exercise, as a limb of the body does, and that exercise will make them habitual. From the practice of the purest virtue, you may be assured you will derive the most sublime comforts in every moment of life, and in the moment of death.*¹⁷

This, as Jefferson says, is why we sweat the small stuff—because it grows into a habit and develops moral rules like foundations of honesty. With that high watermark, courage will be easier to muster.

Speaking to a Congressional committee, Justice Louis Brandeis spoke about courage in these words:

*[Men] cannot be worthy of the respect and admiration of the people unless they add to the virtue of obedience some other virtues—the virtues of manliness, of truth, of courage, of willingness to risk positions, of the willingness to risk criticisms, of the willingness to risk the misunderstandings that so often come when people do the heroic thing.*¹⁸

The gray area about which I speak leads to an ethics trap, believe it or not, in which rationalization takes us to a place without a stunningly wrong answer. Examples may include adjourning to

a court date or counsel meeting date knowing it may be impossible to meet; quoting only part of the case (or relying on a case that is on appeal); withholding relevant facts; not notifying the judge of multiple related proceedings, including related cases in other courts; taking a matter to a new judge when another jurist is seized or when you lose on a motion (clerk's notes don't always immediately catch this); not following through with promises to other counsel or to the court; not just interpreting the facts to help one's client but actually twisting the truth to get the client's needed result; and so on.

I could give many other examples, but I certainly do not want to be pointing the finger. It is just that the view jurists have of the ethics of lawyers comes from the bird's-eye view of every case that unfolds in front of us. For me, this includes having heard constitutional applications, conducted jury and bench trials, dealt with numerous contempt motions, and ruled on thousands of chambers motions of a variety of civil and family types. The result of all of this is a judge with more gray hair, but, significantly, these examples go beyond abstract theoretical ideas into what are becoming lost virtues. Judges know which counsel have them and which do not.

On a less serious note, let me point out how easy it is to tell a white lie and be successful. The following is a story I read in a rural Montana newspaper:

George Phillips, an elderly man from Meridian, Mississippi, was going up to bed when his wife told him that he'd left the light on in the garden shed, which she could see from the bedroom window. George opened the back door to go turn off the light, but saw that there were people in the shed stealing things.

He phoned the police, who asked, "Is someone in your house?"

He said, "No, but some people are breaking into my garden shed and stealing from me."

Then the police dispatcher said, "All patrols are busy. You should lock your doors and an officer will be along when one is available."

George said, "Okay."

He hung up the phone and counted to 30. Then he phoned the police again.

"Hello, I just called you a few seconds ago because there were people stealing things from my shed. Well, you don't have to worry about



them now because I just shot and killed them both. The dogs are eating them right now.” And he hung up.

Within five minutes, six police cars, a SWAT team, a paramedic, and an ambulance showed up at the Phillips’ residence and caught the burglars red-handed.

One of the policemen said to George, “I thought you said that you’d shot them!”

George said, “I thought you said there was nobody available!”⁹

More seriously, let me talk about the things that pressure lawyers into the gray zone and why it is so difficult to stay out of it. First, you face obvious pressures of increasingly demanding schedules, tough clients, higher overheads, minimum hours, and billing mandates. There may be other pressures—for example, pressures to avoid embarrassment in front of peers or clients.

Let me give you an example. On a particular day a lawyer had to deal with an affidavit in Canada’s capital, Ottawa. The problem was that the lawyer was across the river on the Québec side, called Gatineau. But the affidavit’s facts listed Ottawa as their genesis, not Gatineau, and that’s what counsel said had to be sworn to in Ottawa. Accordingly, the lawyer told the clients that they must take the affidavit halfway across the bridge, where the river divides Ontario and Québec, and then deal with it there, as the facts stated. While it was embarrassing, he had to do it that way because those were the facts being sworn to. What was further embarrassing is that it was a busy time of day, which meant it was difficult to catch a cab, as it always is at the federal government headquarters at noon.

At the insistence of counsel, and notwithstanding the badgering of the clients, everybody walked to the middle of the bridge dividing the two cities where the clients demanded action: “Okay is this far enough? No one will ever know. We are in a hurry. Can we finally deal with this? Why do we have to walk any farther?”

Counsel was firm, and only *after* the parties got halfway across the bridge did the lawyer allow the important papers to be sworn.

Another problem with staying out of the gray zone is that, like a nice warm bath, it’s hard to get out. The danger is that spending too much time in the gray zone blurs the boundaries to the point that we do not even

know where the boundaries are. We self-validate too easily in this compromised zone; we follow the low road, and soon our behavior becomes the low road.

Such rationalization may be the same reason witnesses swear to facts that are false. With the passage of time, and after a few white lies, witnesses are convinced by their mental conditioning that the false statement is true. This is rationalization, and it easily misdirects our principled moral bearings. Don't let your clients do it. Our internal endorsement of what we knew was the truth is what counts. Twisting the facts is actually lying. Some witnesses swear they are not lying, but they are. Over time, failing to gut

*meeting in 2007 that he was a retired Marine who received the Medal of Honor, the nation's highest military decoration. In fact, **he had never served in the military.***

He was indicted and pleaded guilty with the understanding that he would challenge the law's constitutionality in his appeal. He was sentenced under the Stolen Valor Act to more than 400 hours of community service at a veteran's hospital and fined \$5,000.

*A panel of the San Francisco-based 9th U.S. Circuit Court of Appeals voted 2-1 to strike down the law. The majority said **there is no evidence that lies such as the one told by Alvarez harm anybody and no compelling reason to make a crime out of them.** . . .*

however, social expectations were irrelevant to the way in which he assisted someone who needed help. His act was immediate and courageous. For that and other reasons, including allegorical meanings, it is a story of significant ethics and deep morality. We are all neighbors, and there is a special power called love in the morals of reciprocity between those of us who need help from each other. And we all do.

What makes the act of a good Samaritan an act of integrity is that he behaved *consistently*. He would have helped the robbed man by the side of the road in exactly the same way the year before, five years later, and regardless of the circumstances or pressures placed upon him. The good Samaritan showed us



check the very personal values of our own morals blurs the lines of a delicate hierarchy between right versus wrong.

Let me tell you about a pending case that shows a judicial interpretation of lying. The following comes from a summary sent to me by an association I belong to:

The Supreme Court will decide whether a law making it a crime to lie about having received military medals is constitutional.

The justices said [on October 16, 2011] they will consider the validity of the Stolen Valor Act, which passed Congress with overwhelming support in 2006. The federal appeals court in California struck down the law on free speech grounds and another appeals court in Colorado is considering a separate case. . . .

The case concerns the government's prosecution of Xavier Alvarez[, who] said at a public

*The appeals court refused the government's request to have the case heard again by a larger group of judges. **Chief Judge Alex Kozinski, agreeing with the majority, said people often tell lies about themselves in day-to-day social interactions. He said it would be "terrifying" if people could be prosecuted for merely telling lies.***²⁰

The best example of integrity, and one that properly ascends beyond centuries of court interpretations and legislation, comes from the Bible, and it is about the good Samaritan. The story is found in Luke 10:25-37. What is interesting about the story is not simply the fact that others passed by a man who was beaten and robbed on an infamous highway and left to die. Instead, what is important is the strained relationship between the Samaritans and the Jews. To the good Samaritan,

honesty because he was true to himself and did not make up a justification for how the person did not need to be helped. The good Samaritan acted justly because he saw the person in need as a person and treated him in the same way all of us would want to be treated in that situation. The good Samaritan's act was courageous because he was not concerned about the reactions of others.

In way of advice for how to establish professional integrity, I would like to offer three ideas. But before I give that advice, let me make a couple of statements. First, I would say that we take the rule of law for granted in North America. If we look around the world we should know how lucky we are to have the rule of law with a strong constitutionally established system of justice. Mindful of what Judge Learned Hand said—that people, not courts, save the liberties

found in constitutions²¹—we should all work hard to protect this neglected treasure.

Second, I have spoken a lot about honesty because I strongly believe that being honest, by itself, almost single-handedly defines integrity. There are several reasons for this. First, honesty goes far beyond what is legally acceptable. Second, it is easy to become dishonest and still be legally balanced. For example, one might be able to make a small slip by borrowing one hundred dollars from an account and then repaying the money, knowing the account will then balance. If the money is not ours, that is wrong. Being honest in all of the *small* steps is how we establish integrity. I am reminded of the scripture that says, “He that is faithful in that which is least is faithful also in much: and he that is unjust in the least is unjust also in much.”²²

Third, our profession truly is at a critical point. Quoting Judge Starr again:

*The legal profession is at a crossroads. We in the profession are called upon in a fundamental sense to choose what it is that we are all about. I have a gnawing fear that we are gradually, but inexorably, choosing the wrong road.*²³

Now here is my counsel, and I begin it with a few questions: At the end of the day, what kind of a lawyer do you want to be known as? Do you want to be like Rex Lee? Do you want the absolute trust of your peers? If so, I know each of us knows the principles and virtues that will get us there, including charity and kindness, which also form part of the virtues that I have spoken about today. Few of us can be the U.S. Solicitor General, as Judge Starr and Rex Lee were. Few of us can have the charm, influence, and charisma of Rex Lee. But we can have his integrity. To help us get there we have guidance from other judges who have given us excellent professional tips and ethical direction.²⁴

Here’s my advice: First, if mistakes are made, such as a misrepresentation, write a letter or make a phone call and correct it. This is not a sign of weakness; this builds integrity and a golden reputation. I’ve seen it happen both ways (i.e., when the mistake was corrected and when the mistake was not corrected).

Second, dig deep into your own soul for answers. You will find an answer there that

is right, and whether it conforms to current professional practice or to your partner’s expectations of you to do otherwise is not relevant unless those practices are this generation’s version of Rex Lee. Many writers have spoken about the importance of internal reflection. Blaise Pascal, for example, wrote: “One must know oneself. If this does not serve to discover truth, it at least serves as a rule of life, and there is nothing better.”²⁵ Benjamin Franklin wrote, “There are three Things extremely hard, Steel, a Diamond and to know one’s self.”²⁶ Aristotle said, “Knowing oneself is the beginning of all wisdom.”

Dig deep and listen to your inner self. This establishes character that will give you a legal reputation and integrity-based principles. We have heard before the importance of the “heart, soul, strength, and mind” linkage.²⁷ These parts of us are also connected for reasons of moral direction.

Third, find a mentor and a true friend— not necessarily the bar’s practice advisor whose daily job it is to give such advice, but a true friend. Find that person who cares about you and your family, that person whose own reputation was built on the consistently correct resolution of little decisions. These kinds of people care about others in a compassionate and humble way. They are not far away from you. Their patience surely extends to privately hear your challenges and troubles without judging you. Go to them privately. Ask them for advice. Then act immediately; act according to the compass and comportment of your inner soul.

NOTES

1 My thanks go to Professor S. Bagg and Justice P. Sullivan for their thoughts and input.

2 Previous to his appointment to the Bench, Justice Tilleman was Alberta’s chief energy regulator on the Alberta Energy and Utilities Board (EUB). Over the last 20 years he has chaired five adjudicative boards or appeal panels, including the EUB. He also practiced environmental law and represented private individuals, industries, and governments.

A resident of Calgary, Justice Tilleman holds law degrees from Canada and the United States. He has served as a member of the University of Calgary’s Board of Governors and Senate and has held numerous positions within the university. Justice Tilleman has published books and articles in the field of energy

and the environment. He and his wife, Sandra, have four children and have been married 32 years.

3 MARK TWAIN, MARK TWAIN’S NOTEBOOK 240 (1935).
4 See Emily Kendall, *Because of “His Spotless Integrity of Character”*: The Story of Salmon P. Chase: Cabinets, Courts, and Currencies, 36 J. SUP. CT. HIST. 96 (July 2011).

5 David K. Winder, Federal Judge on the U.S. District Court for Utah, Utah State Bar Speech to Admittees (Oct. 6, 1987); quoted in James E. Faust, *The Study and Practice of the Laws of Men in Light of the Laws of God*, CLARK MEMORANDUM, Fall 1988, at 20.

6 TRACE ADKINS, (*This Ain’t*) No Thinkin’ Thing, on DREAMIN’ OUT LOUD (Capitol Records 1996).

7 WILLIAM SHAKESPEARE, HAMLET, act 1, sc. 3, line 78.

8 Proverbs 20:7.

9 Bruce S. Jenkins, *Professionalism and Civility*, 24 UTAH BAR J. 32, 36 (March/April 2011).

10 See Doctrine & Covenants 89.

11 Ralph Waldo Emerson, Introductory Lecture on the Times, Read at the Masonic Temple, Boston (Dec. 9, 1841).

12 ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY 123 (2nd ed. 1984).

13 *Id.* at 152.

14 *Id.* at 223.

15 Philippians 4:8; see also Article of Faith 1:13.

16 Kenneth W. Starr, *Acquired by Character, Not by Money*, in LIFE IN THE LAW: SERVICE AND INTEGRITY 242 (Scott W. Cameron, Galen L. Fletcher, and Jane H. Wise, eds., 2009).

17 THOMAS JEFFERSON, 5 THE WRITINGS OF THOMAS JEFFERSON 83 (Albert Bergh, ed., 1904) (in a letter written to his nephew Peter Carr on August 19, 1785).

18 Louis Brandeis, quoted in CHARLES E. WYZANSKI JR., WHEREAS—A JUDGE’S PREMISES 52 (1962); see also MARTIN MAYER, THE JUDGES: A PENETRATING EXPLORATION OF AMERICAN COURTS AND OF THE NEW DECISIONS—HARD DECISIONS—THEY MUST MAKE FOR A NEW MILLENNIUM 346 (2007).

19 *How to Call the Police When You’re Old*, 9 TRICIA’S TRADER 11 (Sept. 21, 2011).

20 Associated Press, *High Court to Rule on Stolen Valor Act*, Oct. 17, 2011; emphasis added.

21 Commonly reported to have been said by him in a speech regarding “the spirit of liberty” in New York in 1944.

22 Luke 16:10.

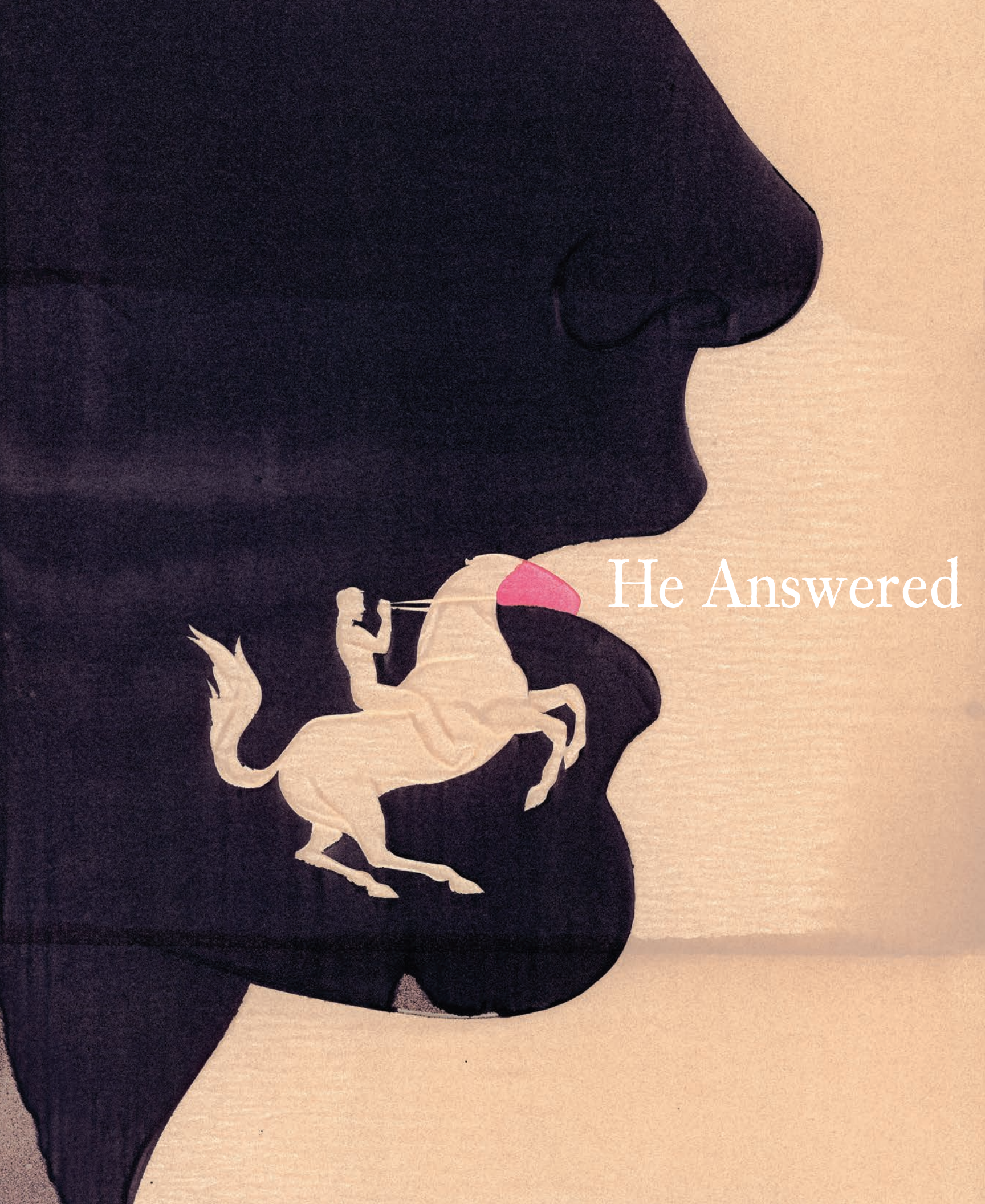
23 STARR, *supra* note 16, at 240.

24 See, e.g., Jenkins, *supra* note 9.

25 Blaise Pascal, from *The Misery of Man Without God*, section II, no. 66, in PENSÉES (1670).

26 BENJAMIN FRANKLIN, POOR RICHARD’S ALMANAC (1750).

27 See Mark 12:30 and Luke 10:27.



He Answered

Discreetly

ELDER L. WHITNEY CLAYTON OF THE PRESIDENCY OF THE SEVENTY

.....

I am grateful to be with you and sincerely appreciate the honor awarded this evening. I am also grateful that our daughter Brooke was asked to introduce me. Thank you for that thoughtful, personal consideration. I am very grateful both for the things Brooke said and for the things she generously omitted. || I suspect that an important consideration for this award is the calling in which I serve rather than any personal merit on my part. There are many lawyers whose accomplishments far outstrip mine. Still, Mark Twain said that he could “live for two months on a good compliment.” His comment captures my feelings. Thank you very much. || I have been a member of the J. Reuben Clark Law Society for several decades. Kathy and I attended what I recall as having been the inaugural meeting of the Law Society in Los Angeles. We unfailingly attended the meetings of the society in Orange County, California. Many of my closest friends are members of the society. I have tremendous respect for noble lawyers. At their best, lawyers help ease humankind through the rough spots of life.

The Two Great Commandments

I would like to recount an experience from early in my legal career. I met one afternoon with a new client in Orange County who asked me to accept a case that had just been filed in federal court in San Francisco. I agreed to do so. There was a hearing scheduled the next morning in San Francisco. Under the circumstances it was not possible to obtain a continuance of the hearing, so I flew to San Francisco that evening and went to the courthouse the next morning.

When the case was called, each of us attorneys who represented parties in the lawsuit made an appearance. However, I told the judge that I was not a member of the bar of the United States District Court for the Northern District of California. When the judge heard this, she asked if there was anyone present who would move my admission so that I might participate in the hearing. One of the other attorneys stepped to the microphone and said, as I recall, the following: “Your honor, I am pleased to move the admission of Mr. Clayton. I have known him now for nearly two minutes, and during that entire time he has shown himself to be of good character and high professional standards.” The court granted my admission and the hearing went forward. The case was settled within a month or so.

But suppose the case had not been settled so quickly. Would that attorney have been willing to make the same statement about me had the case dragged on for several years, had a settlement been impossible, and had the stakes been very high? Similarly, how would his client have felt about my character, ethics, and reputation after depositions, cross-examination, and trial?

The record of an exchange between the Savior and the Sadducees about the resurrection is followed by an account of the Savior’s conversation with a scribe:

And one of the scribes came, and having heard them reasoning together, and perceiving that he had answered them well, asked him, Which is the first commandment of all?

And Jesus answered him, The first of all the commandments is, Hear, O Israel; The Lord our God is one Lord:

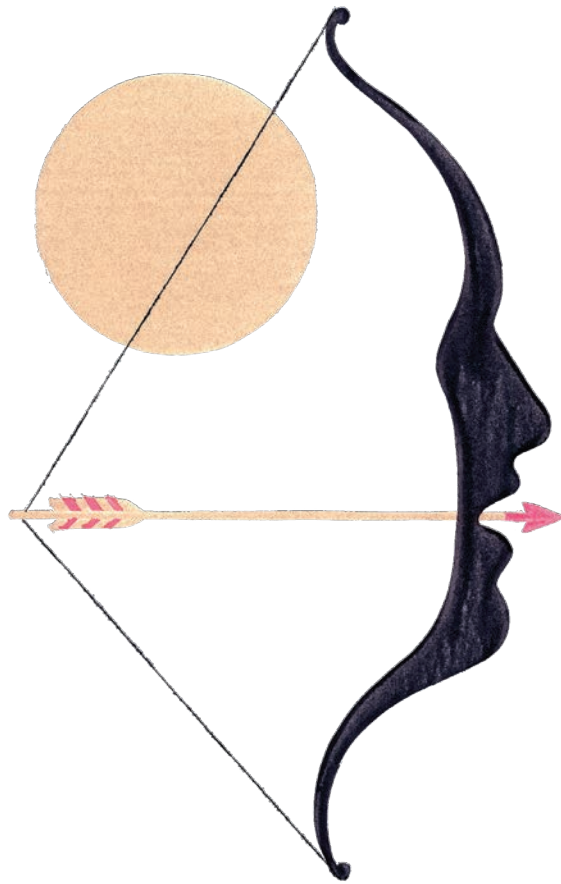
And thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind, and with all thy strength: this is the first commandment.

And the second is like, namely this, Thou shalt love thy neighbour as thyself. There is none other commandment greater than these.

And the scribe said unto him, Well, Master, thou hast said the truth: for there is one God; and there is none other but he:

And to love him with all the heart, and with all the understanding, and with all the soul, and with all the strength, and to love his neighbour as himself, is more than all whole burnt offerings and sacrifices.

And when Jesus saw that he answered discreetly, he said unto him, Thou art not far from the kingdom of God.¹



The simple statement that “Jesus saw that he answered discreetly” is one that I have pondered. The first and second commandments were not given with an exception rendering them inapplicable to lawyers. The adversary system produces a charged atmosphere and intense competition. Fortunes, livelihoods, personal and professional reputations, liberty, and even life itself can be at stake. How can a lawyer reconcile these two commandments at the same time he or she satisfies the duty owed to the client?

We call these two commandments the great commandments because all other commandments depend on them. The Savior said, “On these two commandments hang all the law and the prophets.”²

Compliance with these two fundamental commandments is the eternal standard for all that we say, do, and even think in our lives. “For our words will condemn us, yea, all our works will condemn us; we shall not be found spotless; and our thoughts will also condemn us.”³ Every aspect of our lives must bow to these two commandments, for, in the

end, all that we do will be judged by how well our lives conform to them.

A Genuine Spirit of Christian Goodness

All of us are aware of the spirit of confrontation and discourtesy that infects communication in today’s public square. Too many people in the public eye or with access to the public ear speak with disdain, ridicule, or contempt for those with whom they disagree, apparently unconcerned about or oblivious to the harm such invective inflicts on public sentiment and morale. This abuse pervades newscasts, debates, and talk shows.

Many jurisdictions impose rules or standards for the professional conduct of the lawyers who have the privilege of working in them. Law schools in the United States commonly teach and require courses in professional responsibility, and, in most states, passing a professional responsibility exam is a requirement to practice law.

My experience with most attorneys, in and out of the Church, was that they conducted themselves professionally and diligently. Unfortunately, we nevertheless find discourse and correspondence among lawyers that is negligently or even intentionally abrasive. Some lawyers criticize and disparage other lawyers. They make *ad hominem* arguments that create a poisonous atmosphere among counsel. Some attorneys establish a persona of toughness by the noxious way in which they treat opposing counsel. In one case I saw an LDS attorney repeatedly mispronounce the opposing lawyer’s name to highlight its Jewish origin, which was sort of an ironic tragicomedy—a Mormon making fun of a Jew because of his religion.

These attorneys’ efforts seemed designed to wear their opponents out with personal attacks rather than calculated to weaken their adversaries’ cases and the evidence claimed to support them. I suspect that most of the lawyers who spend time in litigation have witnessed this sort of behavior.

At some point, tenacious representation becomes overzealous and unchristian. Godless behavior in the pursuit of legal victory is not a virtue; it is a rejection of the first

and second commandments and of Him who gave them. If care is not taken, the demigods of victory, of personal reputation for ferocious advocacy, and of earning fees wither allegiance to divinity and become a form of apostate worship.

Sometimes lawyers seem to feel their offensive behavior is justified because they are zealously discharging their duty to their clients or they think that they are in the “right.” The goal in life, however, is not to be right but to be good. Being good means doing good. Even if an attorney believes that a client’s position is morally right or that in some point contested during a lawsuit the attorney personally is in the right, in a deposition or anywhere else the attorney’s communications and conduct should be drenched with the spirit of genuine Christian goodness. No variety of legal success will compensate for failure to keep the first and second commandments.

I do not mean to assert that an LDS attorney should be a timid milquetoast. An advocate is under no obligation to help his opponent make his case or to fail to take honorable and reasonable advantage of another’s mistakes or lack of preparation. An attorney may honorably outwork, outprepare, outthink, and outpresent an opponent. An attorney can honorably cross-examine with skill, pointing out inconsistencies and reasons to doubt a witness’s testimony or credibility. It is no blemish on one’s moral honor to have an opponent feel impressed by and perhaps even fearful of one’s skill, reasoning, work ethic, preparation, and tirelessness.

This address was delivered on January 27, 2012, at the J. Reuben Clark Law Society Annual International Meeting, where Elder Clayton received the J. Reuben Clark Law Society Distinguished Service Award.

I believe, however, that an attorney should never stoop to levels of behavior that are inimical to the key commandments and covenants that guide a Christian in daily living and undergird every moral precept. Ultimately, the golden rule is still in force, as are the first and second commandments. A Christian attorney’s duty is higher than to simply stay within the confines of the law.

If you are practicing law, most of your legal opponents will learn at some point that you are a member of The Church of Jesus Christ of Latter-day Saints. When they do, will that knowledge advance the progress of the kingdom of God because of their

respect for your personal commitment to the highest ethical and personal standards? Will they observe that you follow the Savior in everything you do? Or will your behavior cause them to reject our faith because of the negative example they have seen?

Jesus taught:

A new commandment I give unto you, That ye love one another; as I have loved you, that ye also love one another.

*By this shall all men know that ye are my disciples, if ye have love one to another.*⁴

Although this commandment to love one another is two thousand years old, it must be kept evergreen in our conduct.

At baptism we covenant with God that we will

bear one another’s burdens, that they may be light;

*... Mourn with those that mourn; ... comfort those that stand in need of comfort, and ... stand as witnesses of God at all times and in all things, and in all places that [we] may be in.*⁵

When we succumb to the temptation to treat others in ways that do not accord with these fundamental commandments, to one degree or another we break our sacred baptismal covenants. Instead of helping others bear their own burdens, which surely are heavy enough, we become burdens for them to bear; we give them reason to feel like mourning, and we unquestionably fail to stand as witnesses of God.

“And Nothing Shall Offend Them”

The Apostle James recorded perceptive teachings about the importance of controlling what we say. He wrote:

If any man offend not in word, the same is a perfect man, and able also to bridle the whole body. ...

... The tongue ... is an unruly evil, full of deadly poison.

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

*Out of the same mouth proceedeth blessing and cursing. My brethren, these things ought not so to be.*⁶

Paul taught that we should “give none offence”⁷ and noted that disciples of the Savior should live “giving no offence in any thing.”⁸

Challenges in our communications, of course, can and do arise outside the office and the courthouse. I will share a personal experience from last year. As I do, please remember my father-in-law’s clever comment that “even the worst of us can serve as a bad example.”

Late last summer I drove to a large gas station to fill my car. Big yellow arrows were painted on the ground to direct the flow of traffic through the station’s many gas pumps. Only a few cars were at the pumps, so I decided to save some time. I ignored the arrows and drove the wrong way into the station and over to a pump. I got out of my car and started to fill the tank.

A few moments later a station attendant walked over to me and asked nicely if I had seen the arrows. I said yes. He then politely asked why I hadn’t followed them. I felt a little defensive and told him I had noticed there were only a few cars at the pumps, so it didn’t make any difference that I hadn’t followed the arrows. He asked me to follow the arrows in the future. I agreed to do so, but I believe we could both feel that my agreement was grudging. He thanked me and walked away. I finished filling my car and drove away feeling embarrassed by my behavior.

I knew I needed to return and apologize. I could have done so right then, but I didn’t. A week later I drove to the station to see if the attendant was there. He wasn’t. A few days later I went by again. This time he was there. I drove in (the right way this time, following all of the arrows) and started to fill my car. I then walked over to the attendant and told him I needed to apologize. I reminded him about our interaction and asked for forgiveness. He smiled and extended his hand to me. He was perfectly polite. We had a courteous exchange.

He was kind to forgive me so readily. I was grateful. But I also knew that if I had behaved better in the first place, there would have been nothing to forgive other than my failure to follow the arrows. I had given him offense, and he chose to disregard it. His behavior was exemplary.

The challenge of behaving our very best is a two-sided coin. First, an attorney should not resort to improper treatment of opposing

counsel or witnesses, no matter the advantage that one believes will follow or the reasons that seem to justify doing so. This means that we should not *give* offense.

The gas station attendant’s example reveals the other side of the coin. We do not need to surrender ourselves emotionally to the behavior of others when their conduct sinks below acceptable levels. We neither *give* nor *take* offense, including in our professional practices.

Litigation can become tense and even heated. Tempers can flare and emotions can snap. The temptation may arise to become defensive, irritable, or rude; to get even; or to become abusive. In each case doing so would be giving in to feeling offended. It is hard not to be drawn in to the personal attacks, ridicule, and name-calling that can characterize litigation. Becoming offended is a choice, however; it is a decision. No one can compel someone else to become offended, angry, or vengeful. Our moral agency precludes that and places us, not others, in charge of our

emotions and our conduct. Thus, while it is true that we should not give offense, it is likewise true that we should not take offense, no matter what another attorney says or does.

Understanding this law of personal accountability for both our actions and our reactions helps us see teachings from the Sermon on the Mount more clearly:

Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth:

But I say unto you, That ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also.

And if any man will sue thee at the law, and take away thy coat, let him have thy cloke also.

And whosoever shall compel thee to go a mile, go with him twain. . . .

Ye have heard that it hath been said, Thou shalt love thy neighbour, and hate thine enemy.

But I say unto you, Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you.⁹



A devoted Christian attorney will likely need to be more astute, better prepared, doggedly relentless in pursuing the facts, and more resolute than one who seeks to weaken opposing counsel rather than win a case on the merits. There is a quiet dignity that comes from excruciating preparation and holding the moral high ground. There is great strength in righteous certainty of self. My experience was that attorneys, judges, and courtrooms become aware of and responsive to those attributes. The longer I practiced law the more fully I came to realize that I could do much to control the temperature in heated litigation.

The Book of Mormon provides an example of choosing not to be offended. During a protracted war between the Nephites and the Lamanites, Captain Moroni sent a letter with stinging criticism to Pahoran, the head of the Nephite government. Pahoran's return letter to Captain Moroni is instructive:

And now, in your epistle you have censured me, but it mattereth not; I am not angry, but do rejoice in the greatness of your heart. I, Pahoran, do not seek for power, save only to retain my judgment-seat that I may preserve the rights and the liberty of my people. My soul standeth fast in that liberty in the which God hath made us free. . . .

*And now, Moroni, I do joy in receiving your epistle.*¹⁰

Pahoran's charitable reaction to Moroni's letter helped bring immediate resolution to a critical problem and set the foundation for the Nephites' eventual victory in the lengthy war. If he had instead chosen to be offended, the resulting story might have been much different. His victory over his own emotions preceded the victory of his people and country. Indeed, "He that is slow to anger is better than the mighty; and he that ruleth his spirit than he that taketh a city."¹¹ Pahoran answered discreetly.

Mormon's teachings capture the essence of charity, which is the crowning virtue possessed by true disciples of the Savior. Charity neither offends nor takes offense: "Charity suffereth long, and is kind, and envieth not, and is not puffed up, seeketh not her own, is not easily provoked, . . . beareth all things, . . . endureth all things."¹²

Following the agony of Gethsemane, the Savior was arraigned before angry scribes

and Pharisees in an inquisition convened in the middle of the night. There He was falsely accused, spit upon, slapped, abused, and questioned. When the high priest said to him, "Answerest thou nothing?" Matthew recorded simply that "Jesus held his peace."¹³

Compelled to appear next before Pilate, He was again accused and questioned. "And the chief priests accused him of many things: but he answered nothing."¹⁴

He was then taken to Herod, and the same thing occurred. "[Herod] questioned with him in many words; but he answered him nothing."¹⁵

The Psalmist taught that keeping the commandments immunizes us against being offended, saying, "Great peace have they which love thy law: and nothing shall offend them."¹⁶ Personal spiritual ascendancy over the natural man is made possible when our own sincere efforts are multiplied by the blessings of the Atonement and the grace of Christ. Always, the Savior makes up what we yet lack if we turn to Him in genuine humility and faith.¹⁷

To Act and Answer Discreetly

Recently I learned of a Church member who as a lawyer successfully handled a large case through complicated litigation. He greatly impressed the officers of the opposing client, a major corporation from another country. When the case ended, the opposing client asked him to leave his firm and practice to work in-house for them. He agreed to do so. His conduct must have been impressive, professionally and personally.

The Book of Mormon account of Ammon's zealous defense of the king's flocks and servants can be applied to teach us that a lawyer should do whatsoever the client wants him or her to do "which is right."¹⁸

Alma asked us to consider whether we have been stripped of pride and whether we make a mock of our brethren or heap on them persecutions.¹⁹ These questions should guide us when we think about how we speak to or about an opposing attorney or witness.

One evening years ago, while serving as a ward mission leader, I was in the apartment of some full-time missionaries as we prepared to leave for an evening of proselytizing. The phone rang and I was asked to answer it. The man at the other end of the

phone line told me his name and asked for the missionaries to teach his wife and him the gospel. I asked him how he had learned about the Church. He said that he had done business with one of the local stake presidents and that "any church that can make a man like that is one that I have to know more about." Within weeks the caller and his wife were baptized.

In the case in which the lawyer in San Francisco moved my admission based on our being acquainted for just two minutes, what would have happened had we known each other longer? There were hundreds of other cases in which I participated. Did my actions tend to help the work of the Lord go forward, or did they cause some disrepute to attach to His name and His Church? If the missionaries knock on the door of your opposing counsel or the opposing party, will he or she be more likely to listen as a consequence of your conduct?

I pray that we may all strive to answer discreetly in every aspect of our lives.

I pray the Lord's blessings upon you in all that you do and share with you my witness of the Father of us all, His Living Son, and the Restoration of Their Church and kingdom to the earth. In the name of Jesus Christ, amen.

NOTES

1 Mark 12:28-34.

2 Matthew 22:40.

3 Alma 12:14.

4 John 13:34-35.

5 Mosiah 18:8-9.

6 James 3:2, 8-10.

7 1 Corinthians 10:32.

8 2 Corinthians 6:3.

9 Matthew 5:38-41, 43-44.

10 Alma 61:9, 19.

11 Proverbs 16:32.

12 Moroni 7:45.

13 Matthew 26:62-63.

14 Mark 15:3.

15 Luke 23:9.

16 Psalm 119:165.

17 See Matthew 19:16-22; Mark 10:17-22; Ether 12:27.

18 Alma 18:17.

19 See Alma 5:28, 30.



*It's true that some
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n

Becoming a Good Apple

FEDERAL JUDGE ON THE UNITED STATES COURT OF THOMAS B. GRIFFITH APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PHOTOGRAPHY BY BRADLEY SLADE



afternoon. I'm grateful for this invitation to speak, and I'm mindful of the role I play. None of you is here because of me. I am here because of you. And although the dean is too polite to have told me directly, I have enough experience with graduations to know that the most important responsibility I have in the time that has been allotted to me is to *stay* within the time allotted to me.

Your role in this ritual is captured in this piece of doggerel, appropriately titled "Oh, My Aching Baccalaureate":

*The month of June approaches,
And soon throughout the land,
The graduation speakers
Will tell us where we stand.*

*We stand at Armageddon,
In the vanguard of the press.
We're standing at the crossroads,
At the gateway to success.*

*We're standing on the threshold
Of careers all brightly lit,
But in the midst of all this standing,
We sit, and sit, and sit.¹*

GO FORTH TO SERVE

*This address
was delivered
at BYU Law
School's gradu-
ation on 20
April 2012.*

First and foremost, congratulations to the graduates and to the families, loved ones, and friends who have made this day possible. Graduating from any law school is no small thing. Graduating from this law school is a mark of achievement that will follow you the rest of your lives. Although I can't remember the speaker at my law school graduation, I can remember walking down the Lawn at the University of Virginia, my wife and our four children cheering me on. Other than the day I was baptized, the day I was married, and a handful of family occasions, the day I graduated from law school was the happiest day of my life (until John Beck found Jonny Harline open in the end zone at Rice-Eccles Stadium, a joy later replaced by watching Jimmer destroy Gonzaga to advance to the Sweet Sixteen—you know, some things are just more important than others). I found law school to be a difficult labor, and on my graduation day I felt the sheer pleasure of relief! And so I congratulate you and encourage you to bask in this moment.

This invitation caught me in a moment of personal reflection because our youngest child, Tanne, will be starting her university life just a few months after you are finishing yours. The last several weeks have been filled with discussions between Tanne and me—all right, they haven't been discussions, they've been lectures—about how to make the most of university life. Those ruminations are too late for you. Besides, your presence here shows that you have mastered those lessons.

But it has struck me that Tanne and you represent different parts of the motto that marks the entrance to BYU and has no doubt been referred to repeatedly by graduation speakers across campus these last two days: "Enter to learn; go forth to serve." Tanne is about to enter—hopefully—to learn. And you are about to go forth—hopefully—to serve.

Although it is primarily about your future service that I wish to speak, allow me to ask you to reflect for a moment about what you have learned. I attended a conference at BYU a few years



ago at which President Henry B. Eyring—a prophet, seer, and revelator equally at home in the temple and the academy—offered a remarkable appraisal about the importance of universities.

“Universities have evolved over a long period of time,” he noted. “They are probably as good a way we know of to find truth.” Then President Eyring added something significant about this university, which I hope you sense. He said that he has told his wife that when he is gone, she should get a cottage near BYU “so she can see what God’s up to.” President Eyring continued, “He [has] had a soft hand on this university.”²

President Eyring taught us something important about university life in general and BYU in particular. Learning is an activity imbued with sacred meaning. As an undergraduate at BYU I heard the noted rabbi-scholar Jacob Neusner speak these words in the Marriott Center about the role of intellect in Judaism:

Skepticism and critical thinking are friends, not enemies, of religion. . . .

. . . Man is made in God’s image. And that part of man which is like God is the thing which separates man from beast: the mind. . . . When man uses his mind, he is acting like God. . . .

. . . The claim is that, in seeking reason and order, we serve God.³

I hope that the chief lesson you’ve taken from your university experience is the importance of using reason. I think it significant that during a six-week period in the spring of 1829, the Lord gave Joseph Smith four revelations in which He tutored His young charge about the Holy Spirit. In each of those revelations the Lord pointed out that the Spirit can be recognized only through the heart *and* the mind.⁴ A university experience, vigorously pursued, will train you how to think in ways that will serve you well in all your endeavors.

Harold Macmillan, prime minister of Great Britain and then chancellor of Oxford University, is reported to have quoted one of his Oxford professors, John Alexander Smith:

Nothing you learn here at Oxford will be of the slightest possible use to you later, save only this: that if you work hard and intelligently, you should be able to detect when a man is talking rot. And that is the main, if not the sole, purpose of education.⁵

With all your learning, the question becomes, How will you serve? First off, notice that the motto says “Go forth to *serve*”; it does not say “Go forth to *earn*.” That’s not to say we don’t want you to make money. We do, and unless you are living on a trust fund, you are no doubt more than a little anxious about earning a living that will provide for you and your loved ones. That is as it should be. But there is wisdom in this motto. Your challenge—and



mark my words, because much of your future happiness depends on this—is to use your career as a way to serve others.

In this regard, a career in the law presents unique opportunities with distinct challenges. A number of years ago I gave a talk titled, somewhat improbably, “Lawyers and the Atonement.” (The audience then had the same reaction.) The thrust of my remarks was not that lawyering works at cross-purposes with the Atonement of Christ—although the most casual observation will show that many lawyers do. It was my idea that, properly understood, the role of a lawyer is to help build communities founded on the rule of law. The rule of law is the idea—of staggering importance in the progress of humankind—that a community should not live according to the notion that might makes right. Rather, a community and its laws should reflect the reality that each person is a son or daughter of God and, by virtue of that fact alone, is entitled to be treated with dignity, respect, and fairness. By building communities based on the rule of law, lawyers are, in fact, participating in the redeeming work of the Savior at its zenith. To be sure, the working out of the Atonement occurs initially at the intimate level of a sinner realizing his need for God’s grace. But the Atonement of Christ, I believe, must also ultimately include creating a community based on the rule of law. Our Restoration scriptures suggest as much. Think of the city of Enoch, King Benjamin’s effort to unite his fractured people, and the 200 years of peace and justice achieved in the wake of Christ’s visit to the land Bountiful.

I know what you are thinking: this is *surely* an idealized view of lawyering. And I will concede that it is. As our own Jim Gordon has pointed out, “It’s true that some lawyers are dishonest, arrogant, venal, amoral, ruthless buckets of slime. On the other hand, it’s unfair to judge the entire profession by five or six hundred thousand bad apples.”⁶

Well, there are some good apples in that bunch. I will speak about three good apples who used their lawyerly skills to serve others. They are role models for all lawyers.

THOMAS MORE: “CHRIST’S INEFFABLE PASSION”

I start with Thomas More, the 16th-century martyr for the Catholic faith who was made the patron saint of lawyers and politicians. He must be one very busy man today. More’s martyrdom is portrayed with some artistic license in the movie *A Man for All Seasons*. (By the way, I am enjoining the dean from awarding a diploma to any student who has not yet seen that movie!) Some withhold admiration for More because of the unfortunate fact that in his defense of the faith he was complicit in the burning of heretics. My response: “Well, someone had to burn them!” I’m just kidding. Really. Let the record reflect that I am unalterably opposed to burning heretics. It is the wrong thing to do. Besides, Latter-day Saints would be among the first tied to the stake!

My admiration for More comes in part from his final words, spoken at his execution: “I die the king’s good servant, but God’s first.”

How was More able to make such a declaration and have it be true? A clue comes from his devotional life. Personal and family

prayer and the study of scripture provided the foundation for More’s daily life. And he took his greatest inspiration from a lifelong study of the suffering Christ endured during His atoning sacrifice. Early in his legal career More wrote, “[C]onsider how Christ, the Lord of sovereign power, Humbled Himself for us unto the cross. . . . Christ’s ineffable Passion [is] a strong defense against all adversity.”⁷

While imprisoned in the Tower of London and awaiting his death, More wrote about Christ’s suffering in Gethsemane. It was to be his final written work. “[N]othing can contribute more effectively . . . to the implanting of every sort of virtue in the Christian breast,” he wrote, “than pious and fervent meditation on the successive events of Christ’s Passion.”⁸

The following prayer, attributed to More, should be ours:

*Lord, grant that I may be able in argument, accurate in analysis, strict in study, candid with clients, and honest with adversaries. Sit with me at my desk and listen with me to my client’s complaints, read with me in my library, and stand beside me in court, so that today I shall not, in order to win a point, lose my soul.*⁹

Thomas More is a good apple because he focused his devotional life on the Atonement of Christ.

ABRAHAM LINCOLN: DILIGENT AND CAREFUL WORK

My next good apple is Abraham Lincoln—a safe choice, to be sure. Although much could be said about Lincoln as a role model for your service as a lawyer, I’ll mention only two things. The first may surprise you; the second is intended to make you uneasy. Lincoln, it turns out (and I’m quoting now from James McPherson),

was not a quick study but a thorough one. “I am never easy,” he said, “when I am handling a thought, till I have bounded it North, and bounded it South, and bounded it East, and bounded it West.”

*Several contemporaries testified to the slow but tenacious qualities of Lincoln’s mind. . . . Horace Greeley noted that Lincoln’s intellect worked “not quickly nor brilliantly, but exhaustively.” Lincoln’s law partner William Herndon sometimes expressed impatience with Lincoln’s deliberate manner of researching or arguing a case. But Herndon conceded that his partner “not only went to the root of the question, but dug up the root, and separated and analyzed every fibre of it.”*¹⁰

Your challenge—
and mark my words,
because much of
your future happiness
depends on this—
is to use your
career as a way to
serve others.

Who knew? Lincoln would have had a 3.3 GPA at BYU Law School! Fortunate for him, he didn't ever need to take law school exams.

But there is a great lesson for you in knowing this about Lincoln: Be careful and thorough in your practice of law. Swallow your pride and admit to the partner or senior associate or supervisor that it takes you time to get the right answer. I will confess that every big mistake I have made while practicing law—and I have made some big ones (the safety of a lifetime appointment allows that admission)—has come when I have cut corners because I was embarrassed to admit that I needed more time. On the flip side of that coin, every good thing I have done as a lawyer or as a judge has come when I took the extra time to get the answer right. So work hard and be careful. When you are serving others, much depends on that. As LaVell Edwards reminds us, “Far more important than the will to win is the will to prepare.”

Now to the part about Lincoln that is meant to make all of us feel a little uncomfortable. But don't worry: I'll bury the point beneath familiar and comforting phrases so that only those who dig hard will understand fully what I'm trying to say.

When it comes to our American experiment, Lincoln got it. He understood that this republic, with its powers separated among the branches and between the national and state governments, was “conceived in liberty”—an idea much celebrated today—but also dedicated to a proposition every bit as important and without which liberty doesn't mean much: “all men are created equal.” That is a profoundly radical idea—an idea

worth thinking about deeply and often; an idea with serious implications for how we think, how we act, how we treat others, and how we govern ourselves in any enterprise. It is an idea worth working for and giving one's life to. Lincoln did that, and he forever changed this land for the better. We have a ways to go, but Lincoln helped move us along the path. You must keep us moving down that path.

Abraham Lincoln is a good apple because he worked long and hard and carefully for justice.

REX E. LEE: KINDNESS AND CLARITY

My third good apple is Rex E. Lee, the founding dean of this law school. For those of us who knew Rex, putting him in the company of Thomas More and Abraham Lincoln is no stretch. And his life as a Latter-day Saint lawyer should have special poignancy for this group, even more than a 16th-century Catholic saint or a 19th-century American president.

When I came to BYU as its general counsel in 2000, it surprised me to learn that not everyone here realized just what a force for good Rex had been in Washington during his service as Solicitor General of the United States—the greatest lawyer job in the nation. Most of my legal career up to that point had been spent in Washington, and I was the beneficiary of Rex's reputation for excellence and goodness. When people discovered that I had some connection to him, as tenuous as it was, they immediately thought better of me than they should have.

The power of his reputation was brought home to me forcefully in 2002 when the Law School sponsored what was called the Rex E. Lee Conference on the Office of the Solicitor General. It fell to me to invite our remarkable speakers: every living former Solicitor General of the United States and other great lawyers who had worked as a solicitor general. No gathering like this had ever occurred. My pitch to the invited speakers was an easy one. The calls would go something like this:

“I'm Tom Griffith, the general counsel of BYU, and we are sponsoring a conference called the Rex E. Lee Conference—”

At that point the speaker would cut me off and say, “Yes, I'll come.” All they needed to hear was that the conference was named for Rex. These were Democrats and Republicans, federal judges, law professors, and partners at some of the finest law firms in the land. The group even included a future Chief Justice of the United States—John G. Roberts. And they all came because the conference was named for Rex Lee.

Now what can you learn from Rex Lee that will help you go forth to serve? Most important, in my view, is that Rex was a Church guy. He loved the Church. He and his family were always deeply involved in their ward. He held all kinds of callings, even when he was Solicitor General (you might call him “a home teacher for all seasons”), and he approached each calling with the same enthusiasm and care that he approached an argument before the Supreme Court.

There are two reasons being deeply involved in your ward will help you be a better lawyer. First, ward life compels you to work with and for people regardless of their station, and

lawyers have a special charge to be concerned with those without rank. Throwing yourself fully into the life of your ward will serve as an antidote to one challenge that comes from hanging around lawyers all the time: the tendency to think that our learning and training make us better than others. There are countless people who have a Rex Lee story, and it frequently involves Rex reaching out to someone who wasn't in a position to help Rex in return but who was just someone who needed help.

I count myself in that group. I did not know Rex Lee well. I had met him once or twice while returning to visit my home ward in McLean, Virginia, where the Lees lived while Rex was Solicitor General. During my second year of law school at the University of Virginia, the school's law review published my student note on the Bill of Attainder Clause of the Constitution. I sent a copy to Rex, knowing that he would be arguing a case before the Supreme Court that involved the clause. I had high hopes but low expectations that my note might draw a citation in the government's briefs.

A few weeks later Rex sent me a letter inviting me to be his guest at oral argument. As it turns out, the date of the argument conflicted with some inalterable commitment. Thinking back, I can't imagine what that conflict would have been. I sent my regrets. A week later there was a letter for me from the Solicitor General in my mailbox in the offices of the law review. As one might imagine, the letter caused a stir among my colleagues. They gathered around as I opened and read: "Dear Tom, I am sorry that you are unable to come to oral argument. We have talked it over in the office and decided that we will have to proceed without you anyway. Best wishes, Rex."

Second, being fully invested in your ward the way Rex was will help you learn how to communicate clearly. That skill alone will put you in the 99th percentile of lawyers, most of whom hide behind jargon that few understand, including judges on the D.C. Circuit. The very first time I set foot in any courtroom, I was a third-year law student and the guest of Rex Lee in the Supreme Court. I had come to see him argue. You see, after I was unable to accept Rex's invitation to see him argue the Bill of Attainder case, he called me the next year and asked me to be his guest at another argument. Needless to say, I was very excited. I can't remember the case, but I remember that Rex's opponent that day was a law professor. And the law professor was really good—I mean really good. I knew the law professor was brilliant because I couldn't understand a thing he was saying. He was just like my brilliant law professors whom I couldn't understand either.

Then Rex stood at the podium. My excitement soon turned to disappointment. I was embarrassed for him. I can still remember my sinking feeling. "This is the Solicitor General of the United States arguing before the Supreme Court, and he's just awful," I thought to myself. "I can understand everything he's saying." When Rex argued I didn't feel like I was in the Supreme Court. I felt like I was in a Gospel Principles class.

As a third-year law student, I didn't understand that Rex Lee was such a great lawyer because he made oral argument before the Supreme Court feel like a Gospel Principles class

and not a philosophy class deconstructing Kant. Rex Lee was a great lawyer—many think he was the finest Supreme Court advocate of his or any generation—because he was a great teacher. He could take complex ideas and make them understandable. How did he develop that skill? How can you? That takes practice and hard work—and lots of time in the Primary and Mutual.

Thomas More, Abraham Lincoln, Rex Lee: three great apples. Now it's your turn.

Congratulations for what you have learned. Go forth to serve.

NOTES

- 1 Laurence Eisenlohr, *quoted in* Boyd K. Packer, *What Every Freshman Should Know*, ENSIGN, Sept. 1973, at 32.
- 2 Sharon Haddock, *LDS Leader Speaks on Learning, Religion*, DESERET NEWS, Feb. 28, 2009.
- 3 JACOB NEUSNER, *THE GLORY OF GOD IS INTELLIGENCE: FOUR LECTURES ON THE ROLE OF INTELLECT IN JUDAISM* 1, 2, 4 (1978).
- 4 Doctrine and Covenants 6:22, 23; 8:2; 9:7–9; 11:12, 13.
- 5 *Quoted in* Larry H. Peer, *BYU devotional address: Beethoven's Kiss: On the Odd Reasons for Brigham Young's Excellent University* (Dec. 2, 2003), available at <http://speeches.byu.edu/reader/reader.php?id=4530>.
- 6 James D. Gordon III, *The Profession Everyone Loves to Hate*, CLARK MEMORANDUM, Fall 1996, at 10.
- 7 Thomas More, *from* THE LIFE OF JOHN PICUS, *quoted in* GERARD B. WEGEMER, *THOMAS MORE: A PORTRAIT OF COURAGE* 25 (1995).
- 8 Thomas More, *from* THE SADNESS OF CHRIST, *quoted in* WEGEMER, *supra* note 7, at 208–09.
- 9 *Quoted in* Ave Maria School of Law Applicant Information Booklet (2003).
- 10 JAMES M. MCPHERSON, *TRIED BY WAR: ABRAHAM LINCOLN AS COMMANDER-IN-CHIEF* 2–3 (2008).

Thomas More, Abraham Lincoln, Rex Lee: three great apples. Now it's your turn.

GIVING BACK

A Conversation with Charter Class Member Jim Parkinson

ATTORNEY, AUTHOR, FILMMAKER, EDUCATOR,
HUMANITARIAN, FRIEND OF THE LAW SCHOOL

Rex E. Lee was advised by his friend Willard Pedrick, the first dean of Arizona State University's law school, "that one of the unfortunate facts about life is that every new law school has to have a first class. The only way to deal with that, he said, was just to get rid of them as soon as you could, and then fumigate the building." Lee realized that the charter class at BYU Law School was taking more of a risk than any future classes would be, so he took great care in recruiting them. He understood the value of the Law School and that its mission would become more apparent as the professional and personal lives of the graduates unfolded.¹ He wasn't wrong. The members of the charter class were risk takers, and they were not afraid to start something new in their professional lives in the same way they had done as the first graduates of the Law School.

Editors Scott Cameron and Jane Wise sat down with charter class member Jim Parkinson and talked with him about his preparation, practice, projects, and passions of the last 40 years.

PREPARATION

You were part of the fabled first class at the Law School. Why law and why BYU?

My uncle James O. White was an attorney in Los Angeles. He was a Stanford law graduate, a World War II veteran, a Silver Star recipient, and my hero. I was an undergraduate at BYU, and I wanted to become an attorney. I wasn't sure exactly where that would take me; I just knew it would open many doors.

I belonged to the Blue Key Honor Fraternity at BYU, and one night a fellow by the name of Rex Lee showed up and talked to a small group of us about the vision of the BYU Law School. I had no concept of it before that day. Once I heard the Pied Piper, I said I needed to be in that deal. I had no idea where it would lead, but I knew that if there was somebody like this Rex Lee fellow at the top, it was going to go in a powerful direction. I thought I had the skill set to be an attorney. I knew if I were properly trained there would be an opening somewhere.

My father, a doctor, wanted me to go into medicine. He had a prominent attorney friend call me to say that there were already too many lawyers and that I couldn't make a living as a lawyer.

I asked him, "Is there any room at the top?"

He said, "There is always room at the top."

I said, "OK. I will do just fine. I am going to law school." I was incredibly arrogant

and naïve. My arrogance was knocked out of me the first time I sat in a classroom and got a full-frontal blast of Rex Lee's intellect and met the extraordinary members of that charter class. I had no idea then how important those fellow students and faculty would be in my professional and personal life.

I clerked the summer of my first year with personal injury attorney Thomas T. Anderson in my hometown of Indio, California. Mr. Anderson was considered one of the best personal injury trial attorneys in America and was a true Christian gentleman. Those three months really opened my eyes: I wanted to be a trial attorney. My second year

his example how important it is to take one's skill set and represent the people in the world who are downtrodden, who don't have money, and who need representation. Monroe has always been a great champion for the little guy.

And I've had a remarkable 35 years as a trial attorney. What made it truly remarkable was representing people who needed me. If I didn't win the case, my clients faced serious consequences. So I became a contingency-fee trial attorney, living on the edge but also having an incredible feeling of doing something worthwhile. I received this incredible gift from BYU Law School.

How do you ever repay that? What I have done and what I am doing stems from the ticket I got punched by Rex Lee.

of law school I took a trial practice seminar put on by Woody Deem and Ed Kimball, and I discovered that I had a knack for trial law. Ed had a remarkable influence on me. He had a towering intellect, a profound understanding of the evidence code, and an understanding of the principles of persuasion. I learned the basics and knew what I had to master to become successful.

Monroe McKay opened my eyes to what the law can do for the little guy. In other words, you have a choice of where you will invest your time and talents. Monroe showed me by

Probably the most significant thing that happened to me in law school was developing personal relationships. The impact that Monroe McKay, Ed Kimball, Dale Kimball, and Rex Lee had on me is impossible to quantify. I spent an entire semester with Monroe as a research assistant. Every morning while eating donuts at the Wilkinson Center, I would report on my research and Monroe would talk to me about practicing law and the moral responsibilities lawyers have. How do you ever repay that? What I have done and what I am doing stems from the ticket I got punched by Rex Lee.



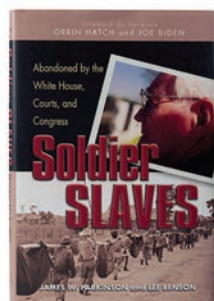
Then there are the friendships that came from law school—Dee Benson and Paul Warner are still my closest friends today. We pushed the envelope a little at the old St. Reuben's—the Catholic school in which the Law School was located before the new building was finished. At our graduation Rex Lee mentioned squiring the first accreditation committee through the building and then seeing us at the end of the hallway. He quickly changed route. Ironically, all three of us ended up being honored by the Law School as an Alumnus of the Year. We are also all serving as adjunct professors at the Law School.

When the three of us graduated, the school had no job placement history, so we actively sought jobs on our own. We did not wait or expect the school to find a place for us in the legal community. I think only a couple of firms came to the school to interview, and a few might have talked to Dee, but they had no interest in talking to Paul or me. Then there were Tom Perry and Steve Hill, who have not only blessed my life but also shaped my professional career. These friends have provided connections and networking throughout my career. Every person who graduates from BYU Law School has been given a gift—not only in skills but in friendships.

PRACTICE

What did you do after law school? What were some of your favorite cases?

After I left law school I moved back to Indio and worked with Thomas Anderson for 12 years as a trial attorney practicing personal injury work, and I ended up becoming his partner. Over the next 35 years I was involved in some interesting personal injury cases and had excellent training. It is just as Monroe



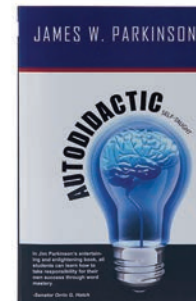
had pointed out: when you do personal injury plaintiff work, you get to know your clients well, and their problems become your problems. Every case I was ever involved in—no matter the extent of the injuries, the damages, or the recovery—turned out to be fascinating. To see what could happen to a person's life because of the negligence of another, and to see how the system tries to remedy the problem and put that person back where they would have been before the negligence, is a fascinating process. Every case was extraordinarily important to me, and I met remarkable people, from farm workers to famous athletes.

The National Tobacco case was one of the most absorbing things I've been involved in. Although I played a very small part in the case, I met and worked with some of the best attorneys in America. In 1998 tobacco companies agreed to end certain marketing practices and to pay for tobacco-related health care costs amounting to \$206 billion over the first 25 years in order to be exempted from private claims. Of course, as a Latter-day Saint, taking on the tobacco industry was very satisfying.

Another case I will never forget is one that we handled on behalf of American World War II soldier Harold Poole and others like him—survivors of the Bataan Death March in 1942 who were used as slave laborers for Japanese steel corporations for



more than three years. Everyone knows that Pearl Harbor was attacked on December 7, 1941. What many people forget is that the Philippines was attacked later that same day. General Douglas MacArthur was unprepared to defend against an invasion of 104,000 crack Japanese troops, and April 9, 1942, marked the largest surrender of American troops since the surrender



some of the best lawyers and law firms in the country. I met some remarkable people in that case, and we took it all the way to the United States Supreme Court and to Congress. We worked very closely with Senator Joseph Biden, Senator Orrin Hatch, and Representative Duncan Hunter. Getting to know the war veterans, learning their stories, and hearing directly from them was a

Every person who graduates from BYU Law School has been given a gift—not only in skills but in friendships.

at the Appomattox Courthouse. The Japanese then had a problem in the form of 10,000 American and 70,000 Filipino soldiers to deal with. The resulting death march—in which these prisoners were marched to prison camps—was gruesome. Because surrender was so dishonorable according to the Japanese warrior code, the Japanese soldiers brutalized the prisoners. When you consider the number of soldiers who died on that 84-mile march, there was a dead body every 32 feet. Later, when Japan required additional workers for the war effort, the survivors were shipped to Japan to serve as slaves to Japanese private industry. For more than three years these men worked in steel mills and mines. When they returned home they were told not to talk about what had happened.

Unlike the tobacco case, I was co-lead counsel on this litigation. We had a team of

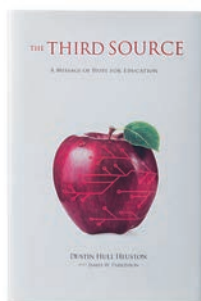
remarkable experience. I listened to their responses to death, to cruelty, and about the end of the war, and just listening to those stories changed how I look at life.

PROJECTS AND PASSIONS

You went from practicing law to writing books and making a documentary. How did you become involved in these projects?

AUTHOR: *Soldier Slaves*

When I first met some of those soldier-slave survivors, it dawned on me that theirs was a great story. I wanted to share it with other people, so I talked to Lee Benson, a columnist for the *Deseret News*, and Dee's twin brother. I had done other projects with Lee, and I started reporting to him every time I met with one of the Bataan Death March survivors. Lee came to many of the hearings, and we began working on a book as the case progressed. Lee and I traveled with Harold



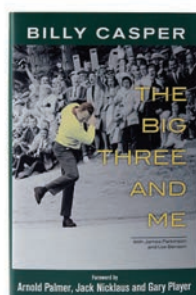
Poole—Paul Warner’s father-in-law, who became the protagonist of our book *Soldier Slaves*—to the Philippines. There we retraced the Bataan Death March. Writing the book, gathering the stories, and digging into the history with Lee was a remarkable, life-changing experience.

FILM MAKER: *The Inheritance of War*

The natural progression of the book was to make a documentary. It was titled *The Inheritance of War*. I had a very fine filmmaker, Ashley Karras, who helped me. She went to the Philippines and filmed, and I interviewed the men. The documentary has been shown in film festivals across the United States. The footage and the interviews are very moving, and I’m so thankful we captured that with the documentary. The book tells of the litigation and the story of Harold Poole. Together, the book and the documentary tell a powerful story.

EDUCATOR

After I wrote *Soldier Slaves* I decided to take the story into high schools and teach that part of American history to young people. I have gone to high schools in New Jersey, Mississippi, California, and Utah, and I’ve spoken to probably 10,000 students about the book. I would show the documentary and give the students a copy of the book. I also started an essay contest titled “What Is a Hero?” and



gave \$1,000 scholarships to students with the best essays. I did this in 10 different schools. I noticed that most of the essays were very poorly written, so I dug a little deeper and found that some high school students can’t read or write. They are either illiterate and can’t read or aliterate and can read but choose not to. I began to ask students how many books they were reading, and I was stunned at the lack of interest in reading.

AUTHOR: *Autodidactic: Self-Taught* and *The Third Source*

This discovery led me to write a little book titled *Autodidactic*, which means “self-taught.” I emphasized that each student has to take responsibility for his and her own education by learning vocabulary, reading, and writing. I put a list of important books to read at the back of the book. This book has gone to probably 15,000 high school students across the country, and there has been a remarkable response in terms of students turning their lives around and becoming more interested in reading.

I gave a presentation in Cedar City, Utah, a year or so ago. A student came up to me afterward and said he wanted to talk with me privately.

He looked at me and said, “Are you lying?”

I asked what he meant.

He said, “Well you said anyone can make it. I come from a foster home. My mother got us

on drugs when I was eight. Can someone like me make it?”

I reached in my pocket, pulled out \$20, and gave it to him. I said: “Go buy a dictionary, start reading, and look up the words you don’t know. It’ll change your life.”

His teacher called me four months later and said that the student’s grades had gone from a D- to a B+ and that he had read 10 books. He has changed his life. When you find a boy in Cedar City in a foster home who had to move out of St. George because his mother got everybody on drugs, you realize that you had better raise your voice to try and save somebody.

With my interest in literacy, I was led to Dustin Heuston, founder of the Waterford Institute in Salt Lake City. The Waterford Institute has melded technology with great scholarship in teaching reading to make it possible for all children to learn how to read. Waterford has sold more than \$500 million of its software around the world. That led me to coauthor my next book, *The Third Source*, with Dustin. What I discovered when I started researching for the book with Dustin is that if a student can’t read by the fourth grade, the game is basically over, because at that point students go from learning to read to reading to learn. The statistics were startling. By the fourth grade only 14 percent of African-American and 17 percent of Hispanic children can read at grade level. Literacy is the civil rights issue of our generation.

I traveled to Senegal in West Africa and met with its president to set up a program for preschool children to lay the groundwork for reading. Although the native language there is French, those children started learning English for 15 minutes a day on the

Waterford programs, and it has been a remarkable success. Then we went to Mississippi, and we are doing the programs there. I see the difference it is making in children’s lives.

HUMANITARIAN:

Work in Africa

You have a love for Africa and are involved in humanitarian projects there. How did this interest develop? What are some of the things you have done?

I was the first chairman of the Republican Trial Lawyers Caucus for ATLA (Association of Trial Lawyers of America), which is dedicated to reaching out to pro civil justice Republicans in Congress. I served with Vice Chairman Wilbur Colom, a very successful trial attorney, Republican, and African-American from Columbus, Mississippi. The year I stepped down he stepped in as chairman, and we became close friends. We have become so close as friends and business partners that we tell people we are twins. He told me on the phone the other day that he is conflicted about the presidential race between Mitt Romney and President Obama. He said he had to give money to both. When I asked why, he said, “Well, on the one hand I’m black, and on the other hand I’m a Mormon.” He considers himself a non-baptized Mormon because of me.

Wilbur asked me about eight years ago to accompany him to Africa. I called up Monroe McKay, who had served a mission in South Africa, and said, “My friend has invited me to Africa. Do you want to go?” He agreed. I invited Monroe for a very important reason: if Jim Parkinson disappears in Africa, no one will care, but if the chief judge of the Tenth Circuit Court of Appeals disappears, the United States Marines will come looking for him.

While we were in Capetown, Wil, Monroe, and I went to church together. That Sunday happened to be stake conference. Because we were an hour early, we were able to watch the chapel fill up. About one-third of the congregation was black. I didn't notice, but Wilbur pointed out that the members didn't segregate: there was a black person and then a white person. Right before the opening prayer, in walked 10 missionaries, all of them black and each wearing name tags from their home countries. Monroe and I were so moved that we couldn't speak.

When we got in the cab to leave, I asked Wil, the non-Mormon, what he thought of the church service.

He said, "Parky, it was wonderful, but ya'll gotta do something about that music."

So I waited six months, and I called up the Mormon Tabernacle Choir office and told them I was bringing a special guest to their Sunday morning choir performance. I asked them to introduce Wilbur Colom and his wife, Dorothy, and dedicate "The Battle Hymn of the Republic" to them. After the broadcast the choir sang and dedicated the song to them. Tears streamed down Wil's face after the song, and I turned to him and said, "Now what do you say about Mormons not being able to sing?"

He said, "Parky, those Mormons can sing! It's you and Monroe that can't sing!"

After Capetown we made our way up to Tanzania. While there we visited with the United Nations for the Genocide in Rwanda, and I met with Hassan Jallow, the chief prosecutor. I invited him to come to BYU to speak at the Orrin Hatch program I sponsored, and we ended up becoming best friends.

From there Mr. Jallow invited me to the Gambia, where I met the president and planted seeds for future programs. This then led me to meet Mr. Jallow's cousin, who is now the ambassador of Senegal to the United States, and that led to my meeting the president of Senegal.

On one of my trips to Tanzania I read an article in the newspaper about a man who lost his wife to breast cancer. She was in her 30s. I thought that if my brother Dr. Brett Thomas Parkinson from Salt Lake City had been there he might have been able to save that woman's life. He is a radiologist who specializes in mammography, and he is head of the breast cancer program for Intermountain Healthcare. When I got back to the United States, Wil and I put up the money, and we partnered with the Women's Medical Association of Tanzania. We got Hologic, a maker of mammogram machines, to donate 13 machines to Tanzania. Then my brother and his group traveled to Tanzania to train doctors on the equipment. We also had doctors from Tanzania train in Utah and Mississippi. Now they have 13 mammogram machines operating in Tanzania, a country of 35 million, when before there were no working machines. My work with Wilbur then led to a business partnership, and we have now built our first hotel in Africa. We will be building two more this year and probably more than 30 in the next 10 years.

I was asked by Michael T. Benson, the president of Southern Utah University (SUU), to be his presidential ambassador and a distinguished fellow for international engagement. As the presidential ambassador for SUU, I have now met with six of the vice-chancellors of the top university in Tanzania. We are currently setting up exchange

programs for SUU and the University of Dodoma. On my next trip I am going to meet with the past president of Tanzania, Benjamin Mkapa, who is currently serving as chancellor of the University of Dodoma.

FUTURE PROJECTS

What are your plans for the future?

I am spending most of my time working on my African investments and philanthropies. I recently collaborated with Lee Benson and coauthored *Billy Casper: The Big Three and Me*. We are currently traveling the country promoting this book. I've been to the Masters and the U.S. Open with Billy Casper and Lee. If you want to really enjoy the Masters, you need to go with a guy who owns a Green Jacket! One organization I continue to support and am a proud member of is the 100 Black Men of Columbus, Mississippi—a service organization. I don't live in Columbus, so it was quite an accomplishment to become a member. I think I am the only white member in the country.

FRIEND OF THE LAW SCHOOL

You are a committed friend and donor to the Law School. What projects are you especially proud of?

The only reason I have had an opportunity to work with the people I have, the only reason I have been able to write books and make a documentary, and the only reason I'm in Africa is that I had a law degree from BYU. That's my only calling card. So I have incredibly strong feelings about the Law School. Without it I would never have had my career. I don't take it for granted at all—no graduate should. Every graduate should be looking for opportunities to give back.

As for projects, in 2004 I organized what became a yearly

conference until 2011. The Orrin Hatch Distinguished Trial Lawyers Conference brought trial attorneys together at the Law School. Because of my 2005 trip to Africa with Monroe and Wil, I invited Hassan Jallow to speak. We had two past presidents of ATLA and Ming W. Chin, associate justice of the California Supreme Court, as speakers. We have also had the head of the NAACP of Mississippi along with federal judges and U.S. attorneys as speakers. Secondly, I was able to chair the fund-raising effort for the trial courtroom at the Law School. It is a beautiful room with milled cherry-wood paneling and state-of-the-art technology. It is a superb setting to learn trial advocacy skills in. I consider court rooms to be sacred spaces, places where the truth—the verdict—is found.

Let me repeat myself: How can anyone who graduated from this law school not give back? The relationships I established here are still strong. They impact me every time I turn around. The people I met here make me want to be a better person and a better lawyer, and they have connected me to others who have helped me professionally. Back in the day we had incredible access to the faculty. I could walk into Rex Lee's office and talk to him anytime I wanted that first year. In fact I did the same thing with Dale Kimball. They were always available to talk, so that was incredible. The faculty at the Law School now are extraordinary! They could go anywhere and do anything, but they choose to be at this law school.

NOTE

- 1 Rex E. Lee, *Thoughts After 15 Years*, CLARK MEMORANDUM, Spring 1990, at 15–16.

POINTERS FOR YOUNG LAWYERS:

BE WILLING TO TAKE REASONED RISKS



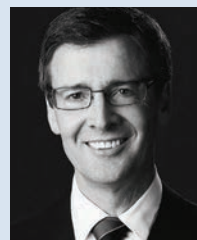
Too often we want to see the end from the beginning. We want to get to the “happily ever after” before we realize what “happy” is. This can happen so easily when we emerge from a prolonged stint in education. It is important that once the euphoric rush wears off from having one’s first paycheck-producing job, we are still able to take “reasoned risks.” Four Law School graduates—Sheila McCleve, Shawn Lindquist, Steven Lund, and Bruce Reese—love their careers and agree that among the most important traits for a young professional to have are faith and flexibility.



SHEILA MCCLEVE, '76, worked as a law clerk to Justice Richard Howe of the Utah Supreme Court and then got a job working for the Utah Public Service Commission. Her associations with people affected her even more than the content of her everyday work life and led to her being appointed a judge in Salt Lake City, where she served for more than 25 years. Sheila advises, “We should do everything we can in our current position, and then the hand of providence can intervene, and an opportunity may present itself that could not have been foreseen.”



SHAWN LINDQUIST, '97, thought he had landed his dream job when he was the first BYU Law School graduate to be hired by Wilson Sonsini Goodrich & Rosati in Silicon Valley. He loved his job, but on the verge of partnership he took a leap of faith and joined Omniture, a young technology company headquartered in Utah. Though his colleagues counseled that the decision was risky, it turned out to be one of the best decisions of his career. “I’ve never left a job for a negative reason,” Shawn says. “It was always for something that I felt was important to my family and would provide me with additional opportunities and challenges. When I left, I never wanted to leave my colleagues in a lurch, so I always made sure that projects were completed and responsibilities fulfilled before moving on.” This has paid dividends, and now Shawn employs Wilson Sonsini to assist with legal matters for Fusion-io, where he is currently serving as chief legal officer.



STEVEN LUND, '83, was working for a law firm in Utah County when a close friend asked him to help build a little start-up cosmetic business. Steve acknowledges, “The most comfortable thing would have been to stay with the law firm.” He thought that by helping his friend he could transition from the law firm in which he was working to another state. On the contrary, that “reasoned risk” wasn’t a transition between jobs at all. Steve ended up finding his life’s work with Nu Skin, where after 30 years he has gone from in-house counsel to executive vice president and then to president and currently as chief executive officer.

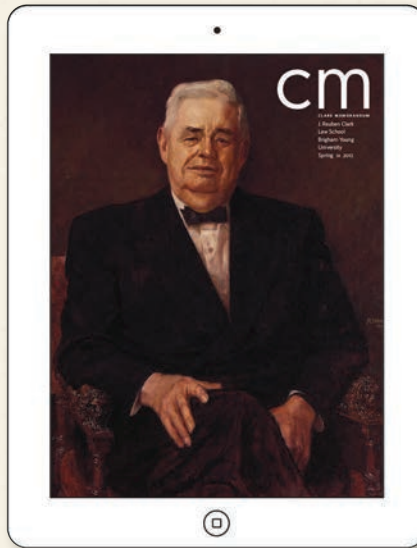


BRUCE REESE, '76, was forced to be flexible when the firm for which he worked imploded. He sought greener pastures in Denver, only to find out he was not meant to be a litigator. It was not until his third position that he started on the path to becoming CEO of Bonneville International Corporation and now of Hubbard Radio. Bruce states: “I think the training that we get as lawyers really does give us a lot of flexibility, and I encourage people to take advantage of that. Be flexible and look for the opportunities that life will present you. I had no clue I would end up doing this. . . . So I think you just have to be ready and open to the opportunities, maybe take ‘reasoned risks’ with your career, and see where they will take you.”

A Motion to Impress



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