

Fall 2013

## Clark Memorandum: Fall 2013

J. Reuben Clark Law School

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CLARK MEMORANDUM

J. Reuben Clark  
Law School  
Brigham Young  
University  
Fall >> 2013



FAITH, FAMILY, AND RELIGIOUS FREEDOM

ELDER JEFFREY R. HOLLAND

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*James R. Rasband*



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DEAR ALUMNI AND FRIENDS,



With school starting this week, I had the opportunity to speak to our entering students—another impressive group of men and women who will surely add to the legacy of the Law School. In contemplating what I might say, I returned to what we consider our founding documents—those profound speeches given near the time of the Law School's creation. One of these talks was given by then university president and now Elder Dallin H. Oaks on the first day of law classes on August 27, 1973. In it he described his expectation that the Law School would observe six key principles:

*First, the law school should be part of Brigham Young University in all respects, with the law faculty and students fully participating and contributing in the intellectual and spiritual life of the university.*

*Second, the J. Reuben Clark Law School must in all respects be worthy of the name it bears. It cannot be satisfied with its assured standing among members of The Church of Jesus Christ of Latter-day Saints but must attain a greatness that transcends religious lines and establishes itself in the eyes of legal educators, scholars, the judiciary, the legal profession, the business world, officials of local, state, and federal government, and citizens at large.*

*Third, the law school must always promote loyalty and understanding of the Constitution of the United States. . . .*

*Fourth, [it] must always foster an enlightened devotion to the rule of law. . . .*

*. . . Fifth, [its] curriculum and manner of instruction . . . should approach the law from a scholarly and objective point of view, with the largest latitude in the matters being considered.*

*Sixth, [it] should concentrate on teaching fundamental principles of law. Its approach should be predominantly theoretical, with appropriate attention to the basic skills involved in lawyering. . . . The half-life of a legal concept, even in these changing times, is measured in centuries, not academic years. . . . A legal training that is predominantly theoretical is best able to equip students with the principles and skills they can apply throughout the shifting circumstances of the next half-century.*

Over the years we have attempted to faithfully implement this counsel, including the final injunction that our approach in teaching and scholarship be “predominantly theoretical.” In recent years, however, what constitutes “appropriate attention” to professional skills has been under consideration as both the academy and the bar have felt an increasing need for more skills training. To that end we have added this year to our curriculum a Law and Entrepreneurship Clinic, a Negotiation and Conflict Resolution Clinic, a Community and Economic Development Clinical Alliance, a Government and Legislative Clinical Alliance, and a family law skills lab (pictured left). The family law skills lab joins an immigration law skills lab. The idea—borrowed from our colleagues in the sciences—is to provide a skills practice experience attached to an underlying substantive course.

I am excited by the growth in our skills curriculum, but, in speaking to our new students, I wanted to make clear that the important project of improving their professional skills should not overshadow the foundational project of teaching fundamental principles of law and of teaching them to “think like a lawyer.” This latter idea has been under some criticism of late, but it would be unfortunate if the desire for more professional skills training were viewed as hostile rather than complementary to teaching fundamental principles of law. It is precisely in learning and internalizing those fundamental principles that we develop traits of leadership and wise judgment.

When we are taught the importance of one decision serving as precedent for later decisions or when we learn to view any appeal through the lens of an appropriate standard of review, we are being taught core principles of leadership and fairness. We miss the point of law school if we think the primary goal is to memorize precedents or the appropriate standard for any particular appeal. In the myriad circumstances we will face in our lives, we should evaluate the decisions of those whom we are charged to lead with reference to whether they had particular knowledge of the facts or were instead setting policy and by how broad a precedent a particular judgment might create. Similarly, understanding that most disputes have two sides is not intended as an exercise in moral relativism but as a recognition that tough decisions require deliberation and listening to affected persons before reaching any conclusion.

I won't rehearse my entire speech here—partly because it may well appear in the next edition of the *Clark Memorandum*—but I am convinced that learning to “think like a lawyer,” through first-year case after first-year case, is extraordinary training in leadership and judgment that serves law graduates well wherever life leads them. I hope you have found that to be true however you have chosen to use your law degree.

Warm regards,

JAMES R. RASBAND

DAVID L. ARMOND\* AND SHAWN G. NEVERS\*\*

# LOOKING BEYOND THE STACKS

STAYING CONNECTED  
TO CURRENT LEGAL  
RESEARCH PRACTICE

PHOTOGRAPHY BY BRADLEY SLADE



“You mean you want to make law school reflect what we actually do in practice?”

That was one attorney’s response to our idea of gathering a group of practicing attorneys with whom we could discuss current legal research practice. This sarcastic question highlights the perceived disconnect between standard law school curriculum and legal practice—and legal research instruction is no exception. While legal research is certainly more practical than many law school courses, the way it is taught in the academy can be estranged from the way it is currently practiced in the field. This, in turn, can be detrimental to students whose first “real-world” task will likely be legal research.

Part of the problem is that many law librarians who teach legal research are not currently practicing law. Law librarians are experts in the use of a variety of legal resources and many have had significant legal research experience, but they often lack a current connection to legal research practice. This does not mean they must return to the practice of law or abandon teaching legal research. It does mean that they should look for ways to stay connected to current legal research practice. As they do, legal research instruction will improve and will better prepare students for the legal research assignments that await them in law practice.

The desire for our legal research instruction to be informed by current legal research practice led us, as BYU law librarians, to form what we now call the Practitioners Council. This council—made up of seven practicing attorneys—acts as an advisory board regarding current legal research practice and provides us with real-world insights and experiences that enhance our teaching. The feedback we receive does not dictate all or even a significant part of what we do in class, but, when coupled with our knowledge, experience, and professional judgment, it is a valuable tool for ensuring our students are well educated in legal research.

### WHY A PRACTITIONERS COUNCIL?

To meet our goal of ensuring that our legal research instruction is informed by current legal research practice, we listed several characteristics we felt were necessary for any project we pursued. One of the first things we decided we wanted was feedback tailored to the practice environments of our particular students. This meant we would have to reach beyond the many connections academic law librarians already make with law-firm librarians. While law-firm librarians provide useful insight about the skills of new associates, they represent only a portion of legal employers.

For example, in Patrick Meyer’s recent survey of law-firm librarians, only five of 162 respondents were from firms ranging from one to 25 attorneys. The number was so small that the small-firm results were not summarized for the article.<sup>1</sup> This leaves a gap in understanding current legal research practice for academic law librarians whose students get jobs with small firms. At Brigham Young University, for example, more than one-third of the students who took jobs with law firms in 2007 took them with firms of fewer than 20 attorneys.<sup>2</sup> In approaching the problem of understanding current legal research practice, we wanted to make sure we took into account firms that do not have a law-firm librarian, since the legal research environment in those firms often differs

in the research tools available as well as the research tasks assigned.<sup>3</sup>

One factor favoring the use of attorneys was that attorneys are the ones who evaluate our students’ work product in the real world and determine just how good their research really is. We wanted to be in touch with their expectations as well as gather their impressions of students’ and new associates’ research skills. This would allow us to have a better feel for what our teaching might be lacking and how we could best prepare our students to succeed.

Critics may argue that attorneys are not the best group to consult when focusing on legal research skills since they do not always follow “best practices.”<sup>4</sup> This might have been a concern if we planned to rely wholly on their feedback to shape our courses. However, we saw our project as an attempt to add the legal research perspective of practicing attorneys to our own best practices to create a better way to teach legal research and motivate students, rather than to replace everything we had been doing.<sup>5</sup> Consistent feedback from practicing attorneys is an area that is lacking in current legal research education.<sup>6</sup>

In addition to focusing on practitioners, another important characteristic was the ability to ask follow-up questions to broaden our understanding and to clarify responses. The inability to follow up successfully is a weakness inherent in surveys. While survey participants often provide useful comments, the surveyor can never dig deeper than what is written on the page. This is fine if the purpose of the survey is to get a better understanding of a legal research environment—print versus electronic, Westlaw versus LexisNexis—but it limits the usefulness of the tool if what is being explored is something more intricate, like the legal research skills and habits of a practicing attorney.<sup>7</sup>

Another critical characteristic we hoped our project would possess, which ultimately led us away from interviews, was a sustained relationship between us and the attorneys with whom we hoped to work. The majority of projects we evaluated—whether surveys, on-site visits, or interviews—were fleeting. Law librarians connected with outside researchers at one moment in time, and then the connection ceased. We hoped that

a sustained relationship with the attorneys would provide us with the continued connection to current legal practice we were seeking. We also hoped such a relationship would produce a greater investment for the attorneys and allow us to collaborate with them in ways not possible with a written survey or a single interview. This would allow us not only to gather information but also to get feedback on things we were currently doing or ideas we were interested in trying.

With these three characteristics—attorneys, interview-type interaction, and a sustained relationship—we felt confident we would find the connection to contemporary legal research practice we desired. It was out of these ideas that the Practitioners Council was born.

## THE PRACTITIONERS COUNCIL

### ....GETTING STARTED

To start we decided to synthesize our thoughts and put them in writing. We created a one-page guiding document for what we called the Legal Research Practitioners Advisory Council, which we immediately shortened to the Practitioners Council. This document began by stating the council's purpose: "To assure that legal research instruction is well informed by contemporary legal research practice." It also contained information detailing what the council would be asked to do, including (1) "Be familiar with the goals of the first-year legal research and writing program"; (2) "Provide feedback on the types of research tasks interns, clerks, and associates are typically conducting"; (3) "Provide feedback about existing and proposed legal research assignments"; and (4) "Provide feedback about specific research practices in their environment, including sources and methods most often used."

This document was prepared not only to help formalize the council and set forth its objectives but also to serve as a reference sheet for the attorneys who would become members of the council. For this purpose we also included a few examples of what council members would be asked to do. We did not want the document to be overwhelming, but at the same time we wanted to clearly lay out what we hoped the council would be.



2013-14 PRACTITIONERS COUNCIL

We thought a lot about the time commitment of the attorneys who would be involved. We knew the idea would be much better received if we were sensitive to the attorneys' busy schedules. We decided to ask them to commit to only 10 hours of assistance during a calendar year. We knew this meant we would not be able to get all the information we wanted from them, but we felt it would help with buy-in on the project. As an added benefit, this kept things manageable for us as well.<sup>8</sup> We were also pleased when our library director pledged some financial assistance so that we could offer our council members lunch.

### ....COMPOSITION OF THE COUNCIL

In order to more fully benefit our students, we wanted the council to roughly mirror the employment environments typical of our graduates. We contacted our Career Services Office and acquired their most recent placement report. The report indicated that approximately 70 percent of students went into private practice or a judicial clerkship after graduation. Of those who went into private practice, about one-third were employed by small firms, which we designated as having fewer than 20 attorneys. Approximately 15 percent took jobs with the government or in public-interest work. Using these numbers, we were able to get a better idea of what we wanted our council to look like.<sup>9</sup>

We envisioned our council as being relatively small so that we could have meaningful interaction with the attorneys. After looking at the placement numbers, we determined it would be useful to have approximately one attorney from the government or public-interest area, two attorneys from small firms, and three attorneys from medium to large firms. We also hoped to have some diversity in terms of practitioner age, gender, years of practice, and type of practice. In addition we wanted to make sure we found attorneys who were interested in the council and could commit the time needed.

With this in mind we began making a list of potential council members. We started with people we knew—former law school classmates, people we had worked with, and other lawyers we had come to know over the years. We tried to focus on attorneys in the Provo and Salt Lake City areas, since many of our law students are likely to practice in these cities and the proximity would allow us to meet with the attorneys in person.<sup>10</sup> We also received some recommendations of attorneys who would be good candidates to help us.

We identified eight attorneys we were interested in having on the Practitioners Council: two from the government, two from small firms, and four from medium to large firms. From this group we hoped at least six attorneys would participate.

### ....INITIAL CONTACT

We contacted each of the selected attorneys by phone and explained our idea, making sure to mention our purpose in creating the Practitioners Council, what we would be asking



them to do, and the limited time commitment it would require. All the attorneys we talked to were very receptive to the idea of the council, and many were excited about the project.

There is no doubt attorneys are busy, but we found them willing to commit some time to a project they felt was worthwhile.<sup>11</sup> With all the dissatisfaction there is in the legal profession about how law schools are training students to actually practice law, we think attorneys on the whole will be willing supporters of projects like the Practitioners Council.<sup>12</sup>

## FACE-TO-FACE MEETINGS

### ....ADVISORY BOARD FEEDBACK

When properly constituted, an advisory board represents a wide range of experience, opinion, and approaches to problem solving. In the business-school setting, boards have proven to be powerful tools for informing the curriculum and, in some cases, pedagogy.<sup>13</sup> But few articles have taken the time to describe specific methods used to develop meaningful feedback. As noted above, the members of our council were carefully chosen based on their experience, practice area, and personality. But distilling information from any group of highly intelligent, highly articulate, and highly trained people is always more complex than interacting with a random survey sample or randomized focus group.<sup>14</sup>

An additional level of complexity arose from the primary reason we impaneled the group. Traditional objective surveys work best when you know what questions you are trying to answer. In fact it is hard to imagine how to structure a survey without knowing what questions need to be asked. An overriding concern we had was that legal research practice was changing in ways we could not always anticipate. While survey design is always difficult—the ambiguity of language leads to respondents answering different questions than surveyors thought they were asking—the problem is compounded in a discipline that is so dependent on ever-changing information technology. We knew that we would need to ask questions, clarify responses, and develop consensus—and do it quickly. Because the members of the council were all practicing attorneys, we knew that we would have to limit meetings to 90 minutes or less.<sup>15</sup> Since we wanted to maximize the value of our face-to-face meetings, we knew that standard brainstorming could be only a partial solution.

Alex F. Osborn is traditionally credited with framing modern brainstorming with four basic rules: “(1) Criticism is ruled out. . . . (2) ‘Free-wheeling’ is welcomed. . . . (3) Quantity is wanted. . . . [And] (4) Combination and improvement are sought.”<sup>16</sup> Others have added (5) “One conversation at a time” and (6) “Stay focused on the topic.”<sup>17</sup> Osborn emphasized that brainstorming worked better as a method of solving “problems which primarily depend on idea-finding—not for problems which primarily depend on judgment.”<sup>18</sup> He also admitted that there were limitations to group brainstorming and suggested what he called the “ideal

methodology for idea-finding”—“a triple attack: (1) Individual ideation. (2) Group brainstorming. (3) Individual ideation.”<sup>19</sup> Yet it was difficult to conceptualize how we could leverage this approach while limiting the amount of time we asked members of the council to volunteer.

### ....STEMMING

Fortunately, one of us had prior experience serving on a community council, which had provided exposure to a brainstorming process that combined premeeting introspection with the creative writing technique known commonly as sentence stemming.<sup>20</sup>

For the community council, a series of sentence stems was drafted dealing with participants’ thoughts about major issues facing the community. Some stems were very specific while others were as open ended as “The major issue facing our community is . . . .” Participants were directed to seclude themselves without interruptions and then read and complete each sentence stem at least three times and no more than five times. After pondering the general mission of the community council, responses to the stems were supposed to be emotive—“the first thing that comes into your mind.” However, after the first and second ideas flowed, the third and any subsequent ideas usually followed considerable introspection.

Responses to the questions were emailed to the facilitator two weeks before the face-to-face brainstorming session. As groundwork for the formal meeting, the facilitator reviewed responses, looking for patterns and noting any distinct groupings. Councilors were directed to bring their written responses when the council convened and were led through a whiteboard discussion starting with the first question. Participants were asked to read their highest priority response. This was not necessarily the first response—or even their favorite response—but it was directed to be the response they felt best contributed to the discussion. Every member of the council was asked to participate. After the first sets were summarized on the board, participants were asked to read the next response they wanted to share.

This process continued for just under two hours. Two features of the process stood out. The first was the overall quality of the ideas presented. In almost every case the ideas presented were impressive—far beyond what individual council members could have generated by themselves in any optimal setting for thinking.

The second feature of the stemming exercise was driven by the social dynamic. In all survey and brainstorming sessions there is a persistent problem with conformational bias. People “tend to seek out information that confirms our existing views and hypotheses, and we tend to avoid or even discount data that might disconfirm our current positions on particular issues.”<sup>21</sup> Osborn’s brainstorming includes a “deferment of judgment principle,” which is in some ways an attempt to fight this tendency.<sup>22</sup> Fortunately, the beauty of the stemming exercise was that it leveraged participants’ sometimes-conflicting propensities to contribute and to create by giving them a chance to look over their work product and decide which response helped further the discussion. The final product in the community council setting was a set of clearly defined questions and some excellent proposed solutions.

#### ....STEMMING IN THE PRACTITIONERS COUNCIL

Although a stemming exercise looked like it would be helpful, our time was more limited with the Practitioners Council. We were optimistic that we could reduce the discussion session down to 40 minutes because our group was roughly half the size of the community council. With that in mind, we sat down and drafted our instructions for the stemming exercise and then drafted the actual stems.

The stems themselves were not very sophisticated. For our first set of meetings we decided to use five stems that probed the attorneys’ use of online resources, their search behavior, and their observations of weaknesses in law school legal research instruction.<sup>23</sup> After defining the five stems, we organized them so that the most concretely answerable stems were first, followed by broader conceptual ideas. Our first five stems follow:

1. The feature on Westlaw or Lexis that I use most often is . . . .
2. Besides case law, the most important source in Lexis or Westlaw I use is . . . .
3. The biggest research-related mistake I see inexperienced attorneys make is . . . .
4. The single most important legal research skill that new attorneys need is . . . .
5. The most important thing to remember when using Lexis/Westlaw is . . . .

While the first two stems came directly from ongoing discussion among legal research instructors about the most important features of LexisNexis and Westlaw that should be taught, the third question was an attempt to shine some light on an area we knew little about. As lawyers and librarians we tend to define and solve problems that are brought to our attention by either clients or patrons. While some detective work is important, problems typically come to us, and we don’t spend much of our time defining problems that might be systemic or a consequence of our otherwise exemplary problem-solving behavior.

By asking our council what types of mistakes they had seen others make, we hoped to uncover gaps between what we thought we were teaching and what our students actually did in the early part of their practice. After setting the context with the third question, we attempted to generate more focused ideas about skills and tools with the fourth and fifth questions.

## RESULTS

#### ....LESSONS FOR THE CLASSROOM

The Practitioners Council has provided us with new perspectives that have aided our legal research instruction. While many of the things we learned were not groundbreaking, the process has helped ensure that we remain grounded in legal research as it is actually practiced, which better prepares and motivates our students. A few examples of what we learned and the changes that resulted are described here.

#### Context

Two of the five questions in our initial stemming exercise led to discussions emphasizing the importance of context in legal research: the third stem probed for the biggest research-related mistake practitioners saw inexperienced attorneys make, and the fifth stem targeted what practitioners felt was the most important thing to remember when using LexisNexis or Westlaw. In both discussions a common theme developed about young, inexperienced, or just plain sloppy attorneys who mistook a collection of cases containing keyword phrases for the rule of law in a particular area.

While a general critique of research strategies was beyond the scope of our project, it is interesting to note that all attorneys on the panel expressed concern over how ubiquitous keyword searching has made it easy to mistake an outlying point of law as representing the field as a whole. Younger attorneys on the council expressed the realization that they had to guard against the bad practice, while the longest-practicing member on the council expressed sympathy for young attorneys who were under time

THE PROCESS HAS HELPED ENSURE THAT WE REMAIN  
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pressures to come up to speed in areas they had never practiced before. He lamented the disappearance of a time when attorneys would read every case in the jurisdiction or field to make sure they developed a holistic understanding. From his perspective, electronic resources encourage an eclectic, as-needed approach, which can save an incredible amount of time when serving a diverse practice but has the unintended consequence of limiting attorneys' conceptual understanding of the law as a whole.

As librarians we have most often encountered this problem when student externs contact the library because they cannot find clear summaries in case law that articulate the rule they are arguing. The holdings of the cases they find online usually only deal with exceptions and limitations to the general rules. The general rules are often listed in cases beyond the first few results pages in Westlaw or LexisNexis. This is typically because the common law in that area of practice was settled long ago. Proper use of secondary sources would have helped prevent the mistake, but excessive reliance on keyword searching in case law leaves some lawyers blind to the fact that they are actually missing the primary points they should be arguing.

### *Anecdotes and Motivation*

One of the unanticipated results of the Practitioners Council was the number of valuable anecdotes we gathered from the practitioners. Each of us has our own favorite war stories we tell in our legal research classes: the time we used the digest to find a case others could not; the time we forgot to Shepardize; the time a summer associate we knew rang up a huge Westlaw bill. These stories are valuable because they demonstrate the principles we are teaching. Students take an interest in these stories and tend to remember them more easily than an explanation of how a digest works.

Lawyers are generally good storytellers, and we gathered a wealth of anecdotes from the council that rejuvenated us and our classroom discussions. Old examples from when we practiced either gave way to or were supplemented by examples that had occurred the month or the week before. As we continue to meet with the council, our pool of examples continues to grow, allowing us to incorporate more real-world experience into our classrooms. This demonstrates another benefit of the council: the gathering of perspectives and experiences from a number of attorneys.

Along similar lines, we quickly noticed that the Practitioners Council helped pique our students' interest in what we were teaching. Because much of law school feels removed from legal practice, attitudes toward legal research instruction can suffer, despite the fact it is one of the more practical skills taught. But as our students saw that we were reaching out to practicing attorneys and had a connection with the real world, they appeared more interested in what we had to say.<sup>24</sup> This result is in-line with educational research showing that "perceived *relevance* is a critical factor in maintaining student interest and motivation."<sup>25</sup>

Many other examples have arisen spontaneously in our classrooms as we teach topics we have discussed in the Practitioners Council. These examples help give weight to what we are saying and provide extra motivation for students to focus on learning what we are teaching.<sup>26</sup>

### *Mediating Novices to Experts*

As a result of the feedback we received in our first meetings in 2009, we focused our 2010 meetings on drilling deeper into our council members' research practices. Our inquiry was based on our desire to apply the educational psychology theories regarding deliberate practice and mediated learning experience (MLE) to our research instruction.<sup>27</sup> This meant that we needed to distill specific cognitive structures that could be taught to our students as the foundation for their ongoing development of skills, ideally through compelling practical assignments. To flesh out the differences between novice and expert performance, we started by attempting to identify how our attorneys classified research problems. We asked them to describe particularly challenging research assignments and then to describe those that they would characterize as easy.



As with the 2009 stemming experience, we found that the answers both confirmed our experience and expanded our understanding. While the "easy" spectrum did not surprise us—the most commonly referred to easy assignment was researching a statute—we were caught off guard when all the practitioners listed "research a statute" as their most difficult assignment as well.

The difference in reported difficulty centered on how the statute was applied. One example involved a death-penalty case on appeal that ran into a cap on funds for the defense. After the cap was exceeded, an application was made for additional funds; however, at the same time the legislature passed a statute that not only limited the amount allocated to the appeal but also included a provision that left a defendant to self-representation when an attorney was conflicted out of the representation due to lack of funding. The "get tough" statute failed to state clearly whether it applied to cases that were already in process or if it was completely prospective. In this case, the old statute was easy to find and the new statute was easy to find, but determining which statute applied was very difficult.

Besides the difficulties of subject-matter jurisdiction and temporal application of statutory provisions, another area of reported difficulty was the time frame for an assignment. Based on a firm's litigation calendar, research can have either a short or a long window for completion. Two-thirds of the practitioners reported difficult research problems related to time constraints imposed by the litigation clock. Though we were aware that many

attorneys experienced stress while trying to balance the demands of the practice, we had not conceptualized the timing of the litigation and its limit on the time frame for legal research as a dimensional qualifier for the difficulty of a legal research assignment.

This underscored the limitation of a strictly academic approach to research training—the scientific enumeration of a checklist of skills like “research statutes.” Because as librarians we would classify the attorneys’ examples of difficult problems as statutory applications of first impression, we had never thought to teach students that this type of problem is, in reality, just a particularly tricky type of statutory research. The difficulty is not related to how to use a tool like the statute’s index or annotations to find the text, but instead the challenge comes from the application of what is found. Finding is only the beginning of the legal research skill; application is what distinguishes expertise.

This insight was especially valuable because we had been planning to expand our use of practical research assignments (practicums). The practicums had received positive evaluations from students, but they were not assigned until the middle of the second semester of the legal research and writing course. We had hoped to develop smaller assignments (micro-practicums) as a way “to develop a collection of authentic training tasks that can qualify as deliberate practice activities and support self-regulated learning, generation of feedback, and repeated practice of corrected performance.”<sup>28</sup> What the Practitioners Council taught us was that our checklist approach to legal research skills needed more refinement. Not only would we need to develop assignments that required finding a statute, but the exercises would also need to teach students to develop sensitivity for how difficult the discovered statute is to apply; not only would time limits need to be part of the micro-practicums, but we would also need to teach students to be aware of how timing increases the difficulty of assignments.

#### ....FUTURE ACTIVITIES

Something we especially like about the Practitioners Council is that it is extremely flexible—it can be what we want it to be.

Up to this point we have focused mainly on getting feedback through the stemming exercises in our face-to-face meetings. But we have many other ideas for utilizing the Practitioners Council in the future that may appeal to law librarians wondering if they want to create a Practitioners Council of their own.

As discussed earlier, one of the reasons for soliciting feedback from practicing attorneys is that they are the evaluators of our students’ legal research skills in the real world. In the future we hope to ask our practitioners to comment on students’ work products. During their second semester, our students’ final project is a research scenario that results in a one- to two-page response. We would like to know how the best responses compare to what practitioners expect of a summer associate or even a young associate. This would give us a better idea of whether the work products our top students are producing are really what practitioners want to see.

We also hope to leverage the Practitioners Council to add new research problems to our curriculum. In the past few years we have focused on adding more real-world research assignments to our curriculum.<sup>29</sup> We have used a number of resources—workbooks, research assistants, ourselves—to come up with research scenarios that help teach legal research skills while giving students a more realistic research experience. The Practitioners Council seems like a natural place to find real-world research scenarios. While the practitioners may have to be vague on certain details, we believe we can adapt these scenarios into viable research problems.<sup>30</sup> They can even be introduced as issues recently encountered by a practicing attorney, which will likely enhance student interest.

We anticipate that other ideas for using the Practitioners Council will come as we continue the project. In our minds the flexibility of the Practitioners Council is one of the reasons it is such a useful tool. While we have used it in certain ways that have been helpful to us, others may find very different approaches. However it is used, the most important aspect is the connection it creates between practicing attorneys and academic law librarians teaching legal research.

## CONCLUSION

The ivory tower is the home of academic law librarians who teach legal research. But as legal research practice continues to change, we must reach outside of the ivory tower and connect with contemporary legal research practice. The Practitioners Council has been a valuable tool for us to connect with attorneys who are in the thick of legal research practice. This connection has helped us improve our legal research curriculum, motivate our students, and align our instruction with current legal research practice.

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## NOTES

- 1 Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys*, 101 LAW LIBR. J. 297 (2009).
- 2 Twenty-nine of 79 students. These numbers were calculated by examining a spreadsheet provided by BYU Law School’s Career Services Office of firms for which 2007 graduates went to work. Firm size was then determined by locating the firm on the Martindale-Hubbell website or on the firm’s website.
- 3 See Sarah Gotschall, *Teaching Cost-Effective Research Skills: Have We Overemphasized Its Importance?* 29 LEGAL REFERENCE SERVICES Q. 149, 154 (2010) (noting the possibility that surveys of law-firm librarians are not representative of smaller firms because small firms rarely employ librarians).
- 4 Of course this argument in itself may be flawed. Richard Danner has pointed out that “[a]lthough librarians and others have long shared the sense that lawyers are less effective researchers than they might be, the published literature on the subject suggests that we actually know very little about how lawyers go about their research.” Richard A. Danner, *Contemporary and Future Directions in American Legal Research: Responding to the Threat of the Available*, 31 INT’L J. LEGAL INFO. 179, 184 (2003). This was similarly the case in 1969, when Morris Cohen found that there was little written about the “actual procedures used by lawyers in their search into the law.” Morris L. Cohen,

*Research Habits of Lawyers*, 9 JURIMETRICS J. 183, 183 (1969).

- 5 In a recent article focused primarily on legal research by scholars, Stephanie Davidson pointed out the importance of focusing on those who are actually doing the research. She wrote, “By focusing on theory and models without accounting for the actual practice of lawyers and scholars, librarians may miss important information about the way people use legal information.” Stephanie Davidson, *Way Beyond Legal Research: Understanding the Research Habits of Legal Scholars*, 102 LAW LIBR. J. 561, 565 (2010).
- 6 The American Association of Law Libraries (AALL) has also considered this an area in need of further exploration. Its research agenda includes the question “How do lawyers in various professional settings actually conduct research . . . ?” Am. Ass’n of Law Libraries, AALL Research Agenda, § IV(A) (approved Nov. 4, 2000), available at <http://www.aallnet.org/main-menu/Member-Resources/grants/research-grants/research-agenda.html>. Indeed, the lack of practitioner feedback plagues all of legal education. In *Best Practices for Legal Education*, the authors focus on practitioner feedback as an important principle for assessing institutional effectiveness: “The school solicits and incorporates the opinions of its alumni as well as other practicing judges and lawyers who hire and interact with graduates of the school.” Comments to this principle state: “Many law schools make curriculum decisions, even significant decisions, without consulting practitioners. This approach is precisely contrary to best practices in curriculum development.” ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* 272 (2007). Other important examinations of legal education have also focused on the need to connect with constituents, including practitioners. See GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* 62, 94 (2000); WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS* 181–82 (2007) (Carnegie Report).
- 7 Davidson points out that the results of previous studies regarding the information-seeking behavior of lawyers “suggest that an approach using qualitative techniques, also referred to as a naturalistic or ethnographic approach, would be most effective” for understanding lawyers’ legal research behavior. Davidson, *supra* note 5, at 570.
- 8 We do not want to minimize the fact that the Practitioners Council takes time in a law librarian’s already busy schedule. The time commitment, however, lessens considerably once the council is

organized and the ball is rolling. Additionally, the benefit to legal research instruction has, in our opinion, been well worth the time.

- 9 The placement report numbers also revealed that about 15 percent of our graduates went into “business.” We decided not to include this segment in our composition determination as we deemed it unlikely that legal research was a large part of those graduates’ job descriptions.
- 10 Meeting in person was important to us because of the brainstorming activities we planned to conduct with the Practitioners Council.
- 11 This did not mean that each of the attorneys was able to follow through with the time commitment. It ended up being a great thing that eight attorneys agreed to be a part of the council, as a few of them were unable to be as involved as they first thought.
- 12 See, e.g., Steven C. Bennett, *When Will Law School Change?* 89 NEB. L. REV. 87 (2010) (written by a practicing attorney calling for law schools to adopt programs that will give law students more real-world skills).
- 13 See Gundars Kaupins & Malcolm Coco, *Administrator Perceptions of Business School Advisory Boards*, 123 EDUC. 351 (2002) (reviewing both the literature of advisory boards and the results of their study of boards’ perceived value); see also Brad Gilbreath et al., *Using Management Advisory Boards in the Classroom*, 25 J. MGMT. EDUC. 32 (2001) (discussing bringing boards directly into classrooms).
- 14 Once survey questions are set, there is no nuance, clarification, or adjustment for a respondent’s interest level and experience. In the objective survey world, the responsibility for resolving ambiguity rests on the participants, who have to figure out what is being asked and the best way to answer. In a face-to-face interaction, members of the group can push back on the meaning and purposes of a question in ways they cannot when the creators of the instrument are not in the room. Random focus groups lack the cohesiveness of groups intentionally selected for specific qualities. From our experience, group cohesiveness produces more specific and voluminous feedback, but that in and of itself presents a challenge when information needs to be distilled into actionable items.
- 15 In reality we always planned for one hour and then let conversations linger into the additional half hour.
- 16 ALEX F. OSBORN, *APPLIED IMAGINATION* 156 (3d rev. ed. 1963). While Osborn claims to have “first employed” what he called “organized ideation” in 1938 (*id.* at 151), brainstorming may date as far back as fourth-century B.C. Athens. The war council discussed in the third book of the *Anabasis*

illustrates a form of problem solving in which ideation was valued. XENOPHON’S *ANABASIS*: BOOKS I–IV, at 143–58 (Maurice W. Mather & Joseph William Hewitt eds. 1962). When a Greek mercenary army found itself trapped far behind enemy lines, the solution was to meet and discuss ideas that might lead to a solution: “[I]n view of our present position we decided to meet together ourselves and to invite you to join us, so that, if possible, we might come to some good decision.” XENOPHON’S *ANABASIS*, *supra*, at 147 (translation by author Armond). Though Greek tradition did not necessarily value Osborn’s “free-wheeling” discussion and traditionally ended with a formal approval of the best ideas, the concept of group creativity appears to have been valued for millennia.

- 17 Robert Sutton, *Eight Tips for Better Brainstorming*, BUS. WEEK, July 28, 2006, at 24. (using ideas the author took from innovation consultants at IDEO).
- 18 OSBORN, *supra* note 16, at 158.
- 19 *Id.* at 191; Osborn’s advice is ironic based on a series of studies referred to in the *Wall Street Journal* that emphasized how individual test subjects came up with more ideas than subjects who were in groups. The studies clearly were uninformed of Osborn’s directions, and Robert Sutton’s response about the potential value of group synergy also illustrates how the cited studies missed Osborn’s suggestion that both individual and group activity was preferable to only group brainstorming. See Sutton, *supra* note 17, at 24.
- 20 This technique has elements of Andre L. Delbecq and Andrew H. Van de Ven’s Program Planning Model and what would later become known as Nominal Group Technique (NGT). In *Group Techniques for Program Planning*, Delbecq and his colleagues summarized the social psychological limitations that reduce the efficacy of group brainstorming. ANDRE L. DELBECQ ET AL., *GROUP TECHNIQUES FOR PROGRAM PLANNING* 24–25 (1975). In an earlier article Delbecq and Van de Ven explained how their formal rules for conducting round-robin discussion following the writing phase encouraged much broader participation in the brainstorming activity. Andre L. Delbecq & Andrew H. Van de Ven, *A Group Process Model for Problem Identification and Program Planning*, 7 J. APPLIED BEHAV. SCI. 466, 470–72 (1971). The exercise we conducted might also be classified by some as brainwriting; however, it does not fit neatly in the traditional descriptions. See ARTHUR B. VANGUNDY, *TECHNIQUES OF STRUCTURED PROBLEM SOLVING* 73–76 (2d ed. 1988). Though VanGundy discusses preactivity stimuli,

- the problem statement expressed in a sentence stem is not discussed. See VANGUNDY, *supra*, at 76-79.
- 21 MICHAEL A. ROBERTO, KNOW WHAT YOU DON'T KNOW 33 (2009).
- 22 OSBORN, *supra* note 16, at 191.
- 23 Based on the time constraints of the attorneys, we decided to meet with the Provo practitioners in Provo and the Salt Lake practitioners in Salt Lake. This meant that we used each stemming exercise twice to cover both groups. This worked well because we could focus our second effort a little better based on our first experience.
- 24 As much as we do not like it to be true, many people do not find legal research to be inherently interesting. Many students need some extra motivation to engage with the subject, and many authors have written about the importance of making instruction relevant to students' lives. See Ellen M. Callinan, *Simulated Research: A Teaching Model for Academic and Private Law Librarians*, 1 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 6, 6 (1992) ("Relevance should be the guiding principle in research instruction because it fosters effectiveness. That which is relevant is retained. That which is retained can be applied."); Maureen F. Fitzgerald, *What's Wrong with Legal Research and Writing? Problems and Solutions*, 88 LAW LIBR. J. 247, 263 (1996) (Adult students "need to relate tasks directly to preparation for future social and professional roles."); Kristin B. Gerdy, *Teacher, Coach, Cheerleader, and Judge: Promoting Learning Through Learner-Centered Assessment*, 94 LAW LIBR. J. 59, 64 (2002) ("Giving relevance to the subject [shows] learners how the new knowledge or skills will be important to their lives now and in the future."); Aliza B. Kaplan & Kathleen Darvil, *Think [and Practice] Like a Lawyer: Legal Research for the New Millennials*, 8 J. ASS'N LEGAL WRITING DIRECTORS 153, 187 (2011) ("There is no better way to keep students engaged and motivated than to demonstrate that the skills they are learning in class are the ones they will need in the 'real world.'"); James B. Levy, *Escape to Alcatraz: What Self-Guided Museum Tours Can Show Us About Teaching Legal Research*, 44 N.Y.L. SCH. L. REV. 387, 392 n.19 (2001) ("Adult orientation to learning is life- or work-centered. Therefore, the appropriate frameworks for organizing adult learning are life- and/or work-related situations, not academic or theoretical subjects." Quoting FREDERIC H. MARCOLIS & CHIP R. BELL, *MANAGING THE LEARNING PROCESS: EFFECTIVE TECHNIQUES FOR THE ADULT CLASSROOM* 17 (1984).).
- 25 Jeff Fox, *Establishing Relevance*, THE TEACHING PROFESSOR, May 2010, at 1, 1.
- 26 Sandra Sadow & Benjamin R. Beede, *Library Instruction in American Law Schools*, 68 LAW LIBR. J. 27, 29 (1975) ("Often [first-year students] lack the motivation to learn any more about legal research than they need to complete their first-year course requirements.").
- 27 Almost a decade ago Carol McCrehan Parker referenced the work of psychologist K. Anders Ericsson, explaining:
- Studies of experts in various endeavors have identified some of the ways in which experts differ from novices and suggest that expertise is acquired through "deliberate practice." The term "deliberate practice" refers to the undertaking of learning activities that present "a well-defined task with an appropriate difficulty level for the particular individual, informative feedback, and opportunities for repetition and for correction of errors." Mechanical repetition—such as simply reading and rereading text—will not suffice; concentration is essential. Studies of acquisition of expertise suggest that about ten years of deliberate practice seem to be necessary to become an expert in an endeavor.* [Carol McCrehan Parker, *A Liberal Education in Law: Engaging the Legal Imagination Through Research and Writing Beyond the Curriculum*, 1 J. ASS'N LEGAL WRITING DIRECTORS 130, 136 (2002) (footnotes omitted) (hereinafter Parker, *Liberal Education*)]
- Four years later Parker identified the "practicing bar" as "an obvious place to look for answers" to the "key questions for legal education": "what do expert lawyers know how to do?" and 'how can law schools facilitate deliberate practice of those skills?'" Carol McCrehan Parker, *Writing Is Everybody's Business: Theoretical and Practical Justifications for Teaching Writing Across the Law School Curriculum*, 12 LEGAL WRITING: J. LEGAL WRITING INST. 175, 183 (2006) (hereinafter Parker, *Everybody's Business*). Parker cites Michael Hunter Schwartz's call for the application of self-regulated learning as a strategy to create expert law students and, ultimately, lawyers, but neither author directs much attention to the specific cognitive structures that distinguish novice from expert performance other than the latter group often showing self-directed learning behavior. Parker, *Everybody's Business*, *supra*, at 182-83 (citing Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 454-55, 463). Though both authors do an excellent job of explaining what the ultimate student outcomes should be, neither is very specific on how teachers actually contribute to those outcomes, other than describing them in detail to students.
- Mediated learning approaches spend time looking at questions of how things should be taught, not just what should be taught. The theory of MLE, developed by psychologists in the late 1950s, is rarely directly discussed in terms of Ericsson's deliberate practice. For an interesting history of MLE, see HOWARD SHARRON, *CHANGING CHILDREN'S MINDS: FEUERSTEIN'S REVOLUTION IN THE TEACHING OF INTELLIGENCE* (1987). The failure to connect deliberate practice to MLE is ironic, since deliberate practice presupposes a coach, mentor, teacher, or trainer to develop cognitive structures that lead ultimately to self-identified, self-corrective behaviors. For more on Ericsson's work, in addition to the summation in Parker, *Liberal Education*, *supra*, see Gregg Schraw, *An Interview with K. Anders Ericsson*, 17 EDUC. PSYCHOLOGY REV. 389 (2005).
- We find Feuerstein and his colleagues' rationale for the need for mediation—and, ultimately, its benefit—to be extremely valuable in the context of developing legal research expertise. See REUVEN FEUERSTEIN ET AL., *BEYOND SMARTER: MEDIATED LEARNING AND THE BRAIN'S CAPACITY FOR CHANGE* 25-37 (2010). Once the instructor's role has been defined in terms of mediated learning, then the task becomes an attempt to figure out just what makes an expert researcher.
- 28 Tamara van Gog et al., *Instructional Design for Advanced Learners: Establishing Connections Between the Theoretical Frameworks of Cognitive Load and Deliberate Practice*, EDUC. TECH. RES. & DEV., Sept. 2005, at 73, 79.
- 29 This is in-line with the recently released Boulder Signature Pedagogy Statement, which states that legal research educators "teach an intellectual process for the application of methods for legal research by: 1) Using a . . . mix of realistic problem types." Boulder Statement on Legal Research Education: Signature Pedagogy Statement, *available at* [www.utexas.edu/law/faculty/pubs/bb26663\\_pub.pdf](http://www.utexas.edu/law/faculty/pubs/bb26663_pub.pdf) (last visited July 7, 2011).
- 30 Current legal research education literature advocates collaboration with practitioners in creating problems. Kaplan & Darvil, *supra* note 24, at 32 ("Another way skills courses can effectively integrate research instruction is through the collaboration of skills faculty with . . . practitioners on the design of research problems. Because they are in the field . . . practitioners have a solid understanding of the types of issues new attorneys will face.").

RONNELL ANDERSEN JONES

*A law degree is more than just a degree in law.*

# A LESSON IN FLYING

This address was  
given to prospective,  
admitted, and  
current female  
law students at the  
annual Women  
in the Law luncheon  
on April 3, 2013.

It is a real privilege to be here today, to visit with all of you who are on the cusp of such important and exciting life decisions, and to share with you some thoughts about a life in the law and the excitement of pursuing it. ||

While I appreciate the gracious remarks and kind introduction, if we want to be perfectly clear about my credentials from the outset, it should be publicly noted that my immediate and extended families do not think I am anything much to write home about.

ILLUSTRATION BY MARK SMITH



Indeed, it is fair to say that I am essentially  
a big, fat disappointment to the whole lot  
of them. In the four years since I moved  
back to Utah to begin my job at BYU Law  
School, I have repeatedly been confronted  
by them with legal problems they were sure  
I could solve on the spot, only to fall flat on  
my face when presented with the question.

“Sorry,” I had to say to the relative who phoned me up. “You’ll have to tell your brother-in-law that I don’t have any idea what the legal blood-alcohol limit is for the operator of a big rig in Utah, although I’ll confess I’m distressed that he needs to know.”

“Sorry,” I had to say again a few months later to another asker, this time at a family reunion. “I just don’t know what the Brigham City Code says about double parking in a school zone *just for a minute* when you run in to get your kindergartner.”

And when the most recent relative wanted to know if I knew, off the cuff, if the judge would let him have an extra holiday with his daughter after his ex-wife kept her from Christmas to New Year’s last year, I had to confess, “I don’t know a thing about Utah family law.” He was especially disappointed when an answer did not rush to mind after he gave the added information that the ex-wife in question was a really, *really* difficult person.

And thus we see that, in all meaningful respects, I am a legal letdown.

Now lest you think that my remarks today will contribute nothing more than a bag of tricks about how you, too, can become a letdown to your family and friends, let me say that—aside from the decisions to marry my husband and give birth to my children—law school remains the single best decision I have made in my entire life. It opened my mind, expanded my horizons, showed me potential I did not even know I had, and gave me the tools to be a helper and a builder in my community, my church, my nation, and my home. It is a blessing beyond measure, and I will be supremely grateful until my dying day that the opportunity was mine and that I somehow, miraculously, took advantage of it.

Here’s the real truth about why law school didn’t prepare me for the relative’s drunken in-law, the double-parking aunt, or the holiday-snatching ex-wife: One does not go to law school to memorize lists of laws. Law school offers very few opportunities to store away nuggets of trivial information about which jurisdictions carry what sorts of requirements or what the specific prohibitions are from city to city or state to state. It isn’t what we do at law school. What we do is bigger than that. I knew almost from the moment I walked in the door as a first-year law student that the process would be life changing and that the degree I was earning was, in many meaningful respects, not a law degree at all.

#### A LAW DEGREE IS A DEGREE IN THINKING

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, consider issues that are in tension with one another, and articulate your viewpoint. It requires you to exercise your intellect in ways you have never before exercised it and rewards you with mental muscle you never dreamed you would have.

“It is not the cry but the flight of the wild duck that leads the flock to fly and follow.”



As a friend of mine once put it, learning law is a lot like getting 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 the burdens around you, and it does so by creating within your brain a mind that is different in kind and not just different in degree than the one you had inside your skull when you arrived. I can promise you that this is what you will hate most about law school at your lowest moments and what you will treasure most about law school for every moment thereafter. If, like me, you believe that real happiness and true growth come only from continued learning, law school is the place for you.

A “degree in thinking” sounds awfully lofty and esoteric, and it’s true that some portion of what happens in law school is highly theoretical and blissfully fulfilling for its own sake. But the real task we face—the real reason we are growing these brains—is that our communities, our nation, and our world are buried in problems in need of strong thinkers to tackle them. I firmly believe that no other advanced degree better prepares a person to be a problem solver in a wider array of realms. My law school classmates and former law school students are putting their legal education to work solving problems in government, in business, and at law firms of all sizes and specialties. They are solving problems in public-interest organizations, in their congregations, and in their homes, where they devote full time to their children. A degree in thinking is universally helpful. It is because law school taught me to think and gave me the resources necessary to solve even brand-new problems I have never seen before that I was able to—eventually—find the relevant resources on DUI law, investigate parking regulations, and carefully read the custody agreement to help my family members with problems that were very real to them. I have practiced before the Supreme Court of the United States and can say with complete honesty that my work there was no more fulfilling than this work—and both have been made possible by the thinking tools I gained in law school.

#### A LAW DEGREE IS A DEGREE IN LEADERSHIP

As our dean has articulated numerous times, a law degree is also undoubtedly a degree in leadership. I am convinced that one reason our board of trustees continues to see fit to so heavily subsidize a legal education at BYU is that it recognizes the need to train up strong leaders—people who can negotiate multiple positions, appreciate the power of a well-considered idea, champion democracy while protecting the minority, and think and talk about solutions.

My daughter, a second-grade Chinese immersion student, taught me this proverb: “It is not the cry but the flight of the wild duck that leads the flock to fly and follow.” Law school will, quite simply, teach you to fly—and to feel comfortable in the leadership roles that

will naturally come your way as a result of your education, experience, and exposure to ideas.

There are numerous traits of good leaders that are honed in law school. Primary among them, perhaps, is an appreciation for the value of hard work. Vince Lombardi—who was perhaps the greatest football coach of all time—was famous for all kinds of cheesy one-liners about winners never quitting and quitters never winning and the dictionary being the only place where success comes before work. But he hit the nail on the head when he said this: “Leaders aren’t born, they are made. And they are made just like anything else, through hard work.”

Truth in advertising: law students work hard. They sacrifice some leisure for the gains of this season of their lives. They come to appreciate the law of the harvest—that you cannot reap what you did not sow. And they emerge on the other end of this sometimes taxing, sometimes frustrating, and

# One cannot leave law school without a renewed sense of awe for those who paved

always invigorating experience with a JD degree that uniformly signals an ability to dive in and get something done, to prioritize the important over the unimportant or less important, to make executive-level decisions about the use of time and resources, and to give as much to a task as excellence requires. (Now would be a good time to mention that the same ought to be true as you prepare for law school. Take the LSAT seriously. Study hard for it. Take your undergraduate courses seriously. Work hard in them. It is a simple truth that things that are worth doing are worth doing well. Exceptional brainpower and pure native intelligence mean almost nothing unless paired with a commitment to hard work.)

Good leaders also emerge from law school because law school is a place where people of incredibly high caliber learn and grow together. I tell my students that the greatest gift we as a faculty are able to give them is their fellow students. The friends you make in law school become lifelong networks of opportunity and, more important, deep and meaningful relationships forged from collective experience and shared devotion to the law. Make an effort to learn from your classmates. When you see them not as competitors but as colleagues, you will be grateful for their wisdom, eager for their insights, and pleased with their successes. Great leaders learn from those around them, exude humility, and care about being good people first and good lawyers second, knowing that the latter very often flows from the former.

I have a story to highlight this point: For a number of years I team taught a class at the University of Arizona's James E. Rogers College of Law with Justice Sandra Day O'Connor, for whom I had the privilege of working as a law clerk. The Justice would come to Tucson for the class during the Supreme Court's February recess, and,

having become close to my family during the time I worked in her chambers, she ordinarily paid a visit to our home when she came.

One day, just before her annual visit, I was driving my young son and his friends home from soccer practice. I reminded my son that he would not be seeing his friends for practice the following week because the Justice was coming to visit.

The little boy in the seat next to him asked him, "What's a justice?"

And without skipping a beat my son responded, "Oh, that's a very fancy word for grandmother."

My feelings at the moment were mixed: There was of course a layer of mortification at not having adequately conveyed to my child what it meant to be a Justice of the United States Supreme Court. But I was also overcome with tender appreciation for the exemplary model of humble leadership that my mentor showed to me. Only months earlier *The New York Times* had declared her the most powerful woman in the world, but her interactions with my children sent the message that *they* were the most important people in the world. That is how good leaders behave, and it is a skill set you are going to gain at BYU Law School, where a culture of giving and a spirit of cooperation exist and where the leaders of tomorrow are learning to fly.

## A LAW DEGREE IS A DEGREE IN CHANGING HISTORY

This is true in obvious ways. Twenty-six U.S. presidents were lawyers. Both of the presidential candidates this last election had law degrees, as well as Gandhi, Nelson Mandela, and Francis Scott Key. Justice O'Connor used her law degree to make history in a way that quite visibly opened doors for me and other women of my generation.

But in ways that are simultaneously smaller and exponentially more important than this, your decision to go to law school will make its mark and change the course of things for the better. For many of you a law degree will build a bridge to education and leadership in ways that will have lasting impact in your own family and circle of influence. When my grandmother died during my second year of law school, I was the only one of her two dozen grandchildren who had gone to college. I grew up on a rural farm where money was slim but opportunities for hard work were plentiful, and trips into town to the library were cherished. People in my family did not become lawyers—they did not even *know* lawyers. My own children, by contrast, have real educational opportunities—and educational expectations—that show that one generation and one law degree can set a pattern for the future. Indeed, studies consistently indicate that a mother's education level is the single strongest determiner of the literacy, health, and educational success of her children.

the way for us and a commitment to likewise be bold in defense of what is right.

Your life will be defined by self-improvement born of hard work and a drive to succeed, and you will see that many of the most important benefits of those efforts will be enjoyed by people other than yourself. You will undoubtedly want to do everything you can to keep open as many options as possible for bestowing those benefits on others.

Here, I think, is where BYU Law School, in particular, gives its students a decisive edge. It is a true gift to be able to graduate without much debt. It provides a freedom to make choices based on something other than money and to make the conclusion—for a while, or permanently—that the people who will benefit from your law degree will be public-interest organizations, nonprofit groups, your own young children, or some other work that offers its rewards in something other than dollars but is work you are nevertheless sure is the right beneficiary for that season of your life. It cannot be overemphasized how valuable it is to have this kind of flexibility and to enjoy the peace that accompanies it.

A LAW DEGREE IS A DEGREE IN BOLDNESS

I think boldness is probably, for many of us, a very important offering of a law degree. You will learn boldness in many ways in law school. You will learn it from the very nature of our pedagogy, which requires a student to come out of her shell, think on her feet, own her own knowledge, and become an advocate for those who cannot advocate for themselves. You will learn it from the powerful examples you read and study each day—astounding tales of bravery, integrity, courage, and justice. In my own area of study (the First Amendment) the textbook teems with stories of people who defended those whose viewpoints, positions, and religions were unpopular—stories of lawyers and judges and justices who stood hard ground to defend important principles when others would not do so. One cannot leave law school without a renewed sense of awe for those who paved the way for us and a commitment to likewise be bold in defense of what is right.

Beyond this I am convinced that the very act of deciding to come to law school is itself a manifestation of impressive boldness—and for those of us whose family, culture, or other norms make the decision unexpected or unconventional, this may be all the more true. All of us benefit from a courageous willingness to stretch ourselves beyond our comfort zone and can find that a bold willingness to do the unheard of will reap incalculable benefits.

My husband, children, and I spent last summer in England, and among the many lovely things we were exposed to was a striking poem attributed to Elizabethan-era sea admiral Sir Francis Drake, who rose from humble beginnings to ultimately circumnavigate the world. He titled the poem “Disturb Us, Lord.”

*Disturb us, Lord, when we are too well pleased with ourselves,  
When our dreams have come true because we have dreamed too little,  
When we arrived safely because we sailed too close to the shore.  
Disturb us, Lord, when with the abundance of things we possess,  
We have lost our thirst for the waters of life;  
Having fallen in love with life, we have ceased to dream of eternity,  
And in our efforts to build a new earth,  
We have allowed our vision of the new heaven to dim.  
Disturb us, Lord, to dare more boldly, to venture on wider seas,  
Where storms will show your mastery;  
Where losing sight of land, we shall find the stars.*

What a blessing you and I have to learn and to be educated—to dare to try new things and to make ourselves instruments for good in the world around us. I hope that as women we will seek those opportunities, show gratitude for them, and embrace the challenges that accompany them. As you navigate these decisions, please let those of us who are a step ahead of you in the journey know how we can be helpful. It gives us great satisfaction to do so.

Thank you so much for your time, and best of luck in all your endeavors.

*Professor RonNell Andersen Jones teaches courses at BYU Law School on constitutional law, the First Amendment, media law, legislation, and the United States Supreme Court. She clerked for Judge William A. Fletcher of the United States Court of Appeals for the Ninth Circuit and Justice Sandra Day O'Connor of the United States Supreme Court.*



.....  
THE FOLLOWING REMARKS WERE  
GIVEN AT A FIRESIDE DURING THE ANNUAL  
J. REUBEN CLARK LAW SOCIETY  
CONFERENCE IN WASHINGTON, D.C.,  
ON FEBRUARY 15, 2013.  
.....

# FAITH, FAMILY, AND

ELDER JEFFREY R. HOLLAND



PHOTOGRAPHY BY

.....  
BRADLEY SLADE  
.....

# RELIGIOUS FREEDOM

OF THE QUORUM OF THE TWELVE

## THANK YOU FOR THE PRIVILEGE OF SPEAKING TO YOU TONIGHT.

As has been mentioned, I had the good fortune to be part of the founding of the J. Reuben Clark Law Society during my presidential years at BYU and part of the creation of its first chapter here in Washington, D.C. So this is a particularly sweet moment for me to come back to the maternity ward where this baby was born and note what a dazzling 25-year-old that child has become.

I have in my hand a copy of the program from that night in November 1987 when we formed the first chapter here. To look at it is to take a delightful stroll down memory lane. What a wonderful—and, as it turns out, historic—evening that was, the significance of which is at the heart of our 25th-anniversary activities this week. I am not sure any of us that night conceived of a society that would grow into what this organization has become. You are individually and collectively a very bright light for Brigham Young University, for J. Reuben Clark Law School, and for The Church of Jesus Christ of Latter-day Saints. Congratulations.

I must also mention, however, that I feel pretty intimidated to be here. That can best be summarized not by the number of billable hours your presence tonight represents but rather by one of my favorite Ernest Wilkinson stories, Ernest being another wonderful link between Washington, D.C., Brigham Young University, and J. Reuben Clark Law School. In the latter part of his tenure at BYU, Ernest gave a significant assignment to a committee chaired by a leading faculty member who was, as I recall, teaching in the liberal arts or behavioral sciences. I don't remember exactly what the assignment was nor who the faculty member happened to be, but he was an able man in any case. When the time for the report came due, the chairman submitted the committee's findings in writing, complete with recommendations.

Ernest went ballistic. I don't know what findings and recommendations he wanted, but they obviously were not these. He went red in the face, chewed on the inside of his cheek, as he was wont to do when excited, and generally raged unrestrained for several minutes. The wallpaper peeled back in a place or two. The lights in the room flickered at least twice. All breathing by those present ceased. Then, as quickly as he had exploded, Ernest grew absolutely calm. A more natural color returned to his face and he stopped chewing his cheek. His eyes came back into focus, and the electric circuits serving the room and the man both seemed to be back to normal. With a steady gaze out his window toward the snowy summit of Mount Timpanogos, Ernest threw the report on the desk and in full philosophical resignation muttered to no one in particular, "Well, what can you expect from a man *not* trained in the law!"

Can you imagine the indictment I feel as I stand before you tonight, someone "not trained in the law"? It is almost more than I can bear. Even in my 73rd year I stand before you ashamed I did not go to law school. I apologize. In spite of this severe handicap I will do my best, lest I see some of you going red in the face and chewing on the inside of your cheek.

Of the many issues we could discuss tonight, let me touch on just three that my Brethren and I talk about a good deal as we look at the world around us in the initial years of the 21st century. You will recognize quickly that these are not necessarily new issues—and they are not uniquely Latter-day Saint in nature, though they may increasingly be "latter day" in nature. They are, I am sure, things you have thought about as LDS professionals, LDS parents, and LDS citizens in communities large and small. These three issues are faith, family, and religious freedom.

## FAITH

In his influential book of a few years ago, *A Secular Age*, Charles Taylor called secularism the shift "from a society in which it was virtually impossible not to believe in God, to one in which faith, even for the staunchest believer, is [only] one human possibility among others. . . . Belief in God is no longer axiomatic."<sup>1</sup> Our era has been given other labels—post-Christian and postmodern, to name two—but they are of a piece with Taylor's thesis. Such an age, whatever it is called, has created a climate for popularizing the diminution or minimization of religious faith in a way that is unprecedented in Western culture—or certainly in American culture. Just so very few years ago anyone openly advocating atheism would surely have had a scarlet A seared upon his or her breast as a warning to all who would come near. But listen now to Richard Dawkins:

*Only the willfully blind could fail to implicate the divisive force of religion in most, if not all, of the violent enmities in the world today. . . . Those of us who have for years politely concealed our contempt for the dangerous collective delusion of religion need to stand up and speak out.*<sup>2</sup>

And many have. After Sam Harris published his provocative *The End of Faith* in 2004, Christopher Hitchens, Daniel Dennett, Dawkins himself, and their band of “New Atheists” have achieved near-celebrity status publishing a deluge of texts decrying belief in God. Hitchens spoke for most of them when he said, “One reason I have always detested religion is its sly tendency to insinuate the idea that the universe is designed with ‘you’ in mind or, even worse, that there is a divine plan into which one fits.”<sup>3</sup> (Of course Hitchens has just recently passed away and may now have newer views on the idea of a divine plan. And never mind that militant atheism is the ultimate untenable position, simply because it would take someone with God’s omniscience and omnipresence to be sure that nowhere in the universe was there such an omniscient and omnipresent being. Catch 22. But I digress with philosophical nitpicking.)

Then we have the larger ranks of the agnostics, the more nuanced of which pick and choose from the smorgasbord of religion, admiring the “rational” or “service-oriented” or “prosocial” parts of religion while eschewing any claims of ultimate truth, doctrines of salvation, and considerations of life after death. But there are severe problems with such positions because the historical fact of the matter is that such “vague, uplifting, nondoctrinal religiosity”—to quote national commentator David Brooks—doesn’t actually last very long, nor does it withstand anything approaching the tragic in human experience. Brooks says, “The religions that grow, succor and motivate people to perform heroic acts . . . are usually theologically rigorous, arduous in practice and definite in their convictions about what is True and False.”<sup>4</sup>

I loved what Chief Rabbi Lord Jonathan Sacks of Great Britain said a few years ago in this same vein:

*You read Jane Austen [and] you put it back on the shelf and it makes no further demand of you until you feel like reading it again. But you read a sacred text and you put it back on the shelf [and] it’s still making a demand of you. It is saying this is a truth to be lived. . . . That is the difference between religion and culture. . . .*

*. . . Unless you hear a command [or] an obligation that comes from beyond you [and I would add “from above you”], you will not be able to generate sustainable, [actionable faith].<sup>5</sup>*

But such persuasive insight notwithstanding, the cultural shift of our day, including in the United States, continues to be characterized by less and less affiliation with organized or institutional religion. “In the last five years alone, the [religiously] unaffiliated have increased from just over 15% to just under 20% of all U.S. adults,” the Pew Forum on Religious Life recently reported. “Their ranks now include more than 13 million self-described atheists and agnostics (nearly 6% of the U.S. public), as well as nearly 33 million people” (roughly 14%) who profess some kind of devotion to things spiritual but “say they have no particular religious affiliation” with an institutional church. This trend is more severe in the younger age ranges, with one-third of all U.S. adults under 30 now counted among the religiously unaffiliated.<sup>6</sup>

Allow me one aside here. Inasmuch as more than two-thirds of the religiously unaffiliated nevertheless do say they believe in God, it may well be that part of the reason for this drift away from formal church affiliation has something to do with how churches are perceived. More than two-thirds of the religiously unaffiliated say “religious institutions are too concerned with money” (70 percent) and too deeply entangled in politics (67 percent).<sup>7</sup> A word to the wise for *all* churches.

In the face of such waning religiosity—or, at the very least, waning religious affiliation—Latter-day Saints and other churches must be ever more effective in making the persuasive case for why both religious belief and institutional identity are more relevant than ever and deserve continued consideration and privilege within our society. Such appeals, however, will be met with increasingly sophisticated arguments, including from some in the legal profession.

Perhaps you have all seen Brian Leiter’s book *Why Tolerate Religion?* In it Leiter, professor of jurisprudence and director of the Center for Law, Philosophy, and Human Values at the University of Chicago Law School, argues that Western democracies are wrong to single out religious liberty for special legal protections. Fortunately, he does make a considerable case for “liberty of conscience,”<sup>8</sup> which for us is half a loaf—a very important half—but his argument does, in the end, undercut *institutional* protections that have been important in the past and may be even more important in the multicultural future of this country. It is encouraging that, *at least at present*, our First Amendment commits us to the more protective interpretation of religious freedom. We will see what future interpretations might bring.

One of the most impressive of all recent statements on the subject of religious liberty comes from Michael McConnell, director of the Stanford Constitutional Law Center and a former judge for the U.S.



IF THINGS GO WELL WITH THE FAMILY, LIFE IS WORTH LIVING;  
WHEN THE FAMILY FALTERS, LIFE FALLS APART.

—MICHAEL NOVAK

Court of Appeals for the 10th Circuit. These remarks were made recently at the Ethics and Public Policy Center here in Washington, D.C.:

*The framers of our Bill of Rights thought that religious freedom deserved double-barreled protection. Americans would have the right of “free exercise” of their chosen faith, and government was forbidden to foster or control religion by means of an “establishment of religion.” Today, an increasing number of scholars and activists say that religion is not so special after all. Churches are just another charity, faith is just another ideology and worship is just another weekend activity.*

*All Americans—believers and nonbelievers alike—should resist this argument. . . .*

*The religion clauses of the Constitution were the culmination of centuries of theological and political debate over the proper relationship between spiritual and temporal authority. . . .*

*Religion is an institution, a worldview, a set of personal loyalties and a locus of community, an aspect of identity and a connection to the transcendent. Other parts of human life may serve one or more of these functions, but none other serves them all.*

*To believers, the right to worship God in accordance with conscience is the most important of our rights. To nonbelievers, it is scarcely less important to be free of governmental imposition of a religion they do not accept.<sup>9</sup>*

So the drama of the 21st century unfolds, but as a point of reference we may do well to remember this from the original American drama of the late 18th century. In his moving farewell address George Washington said:

*Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable. . . . And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.<sup>10</sup>*

In that same spirit John Adams made this legendary statement to the officers of the Massachusetts militia in 1798:

*We have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry, would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.<sup>11</sup>*

It was said of us a long time ago that “the Americans combine the notions of [religion] and of liberty so intimately in their minds, that it is impossible to make them conceive the one without the other.”<sup>12</sup> May it ever be so.

## FAMILY

Now a word about family. In a recent book review, Professor Amy L. Wax of the University of Pennsylvania Law School states that decreasing commitment to traditional marriage and the declining birthrates that go with this pose “an urgent and unavoidable challenge both to our continuation as a society and to our very conception of the worth of human existence.” She asks, “Is the demographic implosion a response to practical costs and benefits, . . . or does it tell us something deeper about a loss of purpose or faith?”<sup>13</sup>

In an article in the *Weekly Standard*, Jonathan Last says it may be the latter. He argues that the loss of religion in America has indeed contributed to the decline in marriage, birth rates, family solidarity, and even a robust democracy. “Marriage,” he writes, “is what makes the entire Western project—liberalism, the dignity of the human person, the free market, and the limited, democratic state—possible.”<sup>14</sup>

This plea for marriage was underscored in a recent article from the Witherspoon Institute:

*The foundation for a productive household begins with marriage. Other arrangements cannot measure up, not for the child, not for the couple, not for society, and certainly not for the economy.*



IF WE WANT DEMOCRACY  
TO WORK AND SOCIETY TO  
BE STABLE, PARENTS  
MUST NOURISH A CHILD'S MIND  
AND HEART AND SPIRIT.



... If marriage makes the world and economy go 'round, these newer family structures truncate productivity, and society begins to limp along.<sup>15</sup>

The gifted Michael Novak takes a similar tack in his eloquent commentary on the family:

*Clearly, the family is the seedbed of economic skills, money habits, attitudes toward work, and the arts of financial independence. The family is a stronger agency of educational success than the school. The family is a stronger teacher of the religious imagination than the church. Political and social planning in a wise social order begin with the axiom What strengthens the family strengthens society. Highly paid, mobile, and restless professionals may disdain the family (having been nurtured by its strengths), but those whom other agencies desert have only one institution in which to find essential nourishment.*

*The role of a father, a mother, and of children with respect to them, is the absolutely critical center of social force. Even when poverty and disorientation strike, as over the generations they so often do, it is family strength that most defends individuals against alienation, lassitude, or despair. The world around the family is fundamentally unjust. The state and its agents, and the economic system and its agencies, are never fully to be trusted. One could not trust them in Eastern Europe, in Sicily, or in Ireland—and one cannot trust them here. One unforgettable law has been learned painfully through all the oppressions, disasters, and injustices of the last thousand years: if things go well with the family, life is worth living; when the family falters, life falls apart.<sup>16</sup>*

With current statistics telling us that “worldwide, there are . . . 40 million abortions per year” and that “41 percent of all births in the United States [are] to women who [are] not married,”<sup>17</sup> we should be declaring boldly that inherent in the very act of creation is, for both parents, a lifelong commitment to and responsibility for the child they created. No one can with impunity terminate that life, neglect that care, nor shirk that responsibility. Paul wrote to Timothy, “But if any provide not for his own, and specially for those of his own house, he hath denied the faith, and is worse than an infidel.”<sup>18</sup> If Paul could see our day, surely he would repeat that counsel and would mean more than providing physical nourishment, essential as that is. If we want democracy to work and society to be stable, parents must nourish a child’s mind and heart and spirit. Generally speaking, no community of whatever size or definition has enough resources in time, money, or will to make up for what does not happen at home.

So rather than redefining marriage and family as we see increasing numbers around us trying to do, our age ought to be reinforcing and exalting that which has been the backbone of civilization since the dawn of it. I leave with you this final quote on that subject from David Brooks, with a phrase or two of my own added:

*At some point over the past generation, people around the world entered what you might call the age of possibility. [Another label for our time.] They became intolerant of any arrangement that might close off their personal options.*

*The transformation has been liberating, and it’s leading to some pretty astounding changes. For example, for centuries, most human societies forcefully guided people into two-parent families [with a father and a mother who were devoted to each other]. Today that sort of family is increasingly seen as just one option among many. . . .*

*My view is that the age of possibility is based on a misconception. People are not better off when they are given maximum personal freedom to do what they want. [People are] better off when they are enshrouded in commitments that transcend personal choice—commitments [to traditional marriage and time-honored family life].<sup>19</sup>*

## RELIGIOUS FREEDOM

Let me now say something about freedom of religion with its underlying girder of “freedom of conscience” as the last of our three contemporary issues tonight.

In Dostoevsky’s masterpiece *The Brothers Karamazov*, we find one of literature’s most enduring meditations on the complexity of freedom. In the section featuring “the Grand Inquisitor,” a clergyman interrogates the Savior after He has returned to earth only to be arrested by the church’s authorities.

Simon Critchley writes:

*For the Grand Inquisitor, what Jesus brought into the world was freedom, specifically the freedom of faith. . . . And this is where we perhaps begin to sympathize with the Grand Inquisitor. He says that for 1,500 years, Christians have been wrestling with this freedom. The Grand Inquisitor [says that he himself], when younger, also went into the desert, lived on roots and locusts, and tried to attain the perfect freedom espoused by Jesus. “But now it is ended and over for good,” [and] he adds, “After fifteen centuries of struggle, the Church has at last vanquished freedom, and has done so to make men happy.”<sup>20</sup>*

Aside from condemning the traditional Christianity of that time, the sadness here, of course, is that the Grand Inquisitor’s position is tragic: he yields to the thought that the truth which sets us free is too demanding, too insistent—ultimately a bridge too far. But as Christ Himself taught, so say we: that although freedom is demanding, it is *not* too demanding. The Father’s plan and His Beloved Son’s gift optimistically endow humans with both the ability and the responsibility to make choices with the hope—indeed the confidence—that we will ultimately choose that which benefits the individual and the larger society in which those individuals live. At its best, this is precisely the hope of democracy as well. Inherent in liberal democracy is an assumption, a hope, and a belief that free people will use their liberty to choose good over evil, right over wrong, virtue over vice.

For that reason the United States continues to espouse civil liberties, including that precious “first freedom” of religion, which informs the choices we must make in life.

Does religious freedom and its open expression matter beyond one’s individual faith or particular religious persuasion? Allow me a long anecdote on that subject from our friend Clayton Christensen. He said:

*I learned the importance of this question in a conversation 12 years ago with a Marxist economist from China who was nearing the end of a fellowship in Boston, where he had come to study two topics that were foreign to him: democracy and capitalism. I asked my friend if he had learned here anything on these topics that was surprising or unexpected. His response was immediate . . . : “I had no idea how critical religion is to the functioning of democracy and capitalism.” . . . He continued,*

*“In your past, most Americans attended a church or synagogue every week. These are institutions that people respected. When you were there, from your youngest years, you were taught that you should voluntarily obey the law; that you should respect other people’s property, and not steal it. You were taught never to lie. Americans followed these rules because they had come to believe that even if the police didn’t catch them when they broke a law, God would catch them. Democracy works because most people most of the time voluntarily obey your laws.*

*“You can say the same for capitalism,” my friend continued. “It works because Americans have been taught in their churches that they should keep their promises and not tell lies. An advanced economy cannot function if people cannot expect that when they sign contracts, the other people will voluntarily uphold their obligations. Capitalism works because most people voluntarily keep their promises.” . . .*

*[Such expressions mirror those of] Lord John Fletcher Moulton, the great English jurist, who wrote that the probability that democracy and free markets will flourish in a nation is proportional to “the extent of obedience to the unenforceable.”<sup>21</sup>*

Fortunately we are hanging on to some symbols of what the Founders gave us by way of such a public religious heritage—though in light of what Clayton shared, you may find this as ironic as I do coming from someone in mainland China. Recently on Chinese social media the religious iconography of the president’s inauguration ceremony stimulated an interesting discussion about the role of faith in American democracy.

“Some Chinese find it unbelievable that this secular country’s democratically elected president was sworn in with his hand on a Bible, not the Constitution, and facing a court justice, not Congress,” wrote one Chinese blogger in an online post forwarded more than 2,000 times. “But actually, this is the secret of America’s constitutional democracy: It’s not just the Constitution or the government’s ‘separation of powers.’ Above that is natural law, guarded by a grand justice. And below is a community of Christians, unified by their belief.”<sup>22</sup>

Of course America is more than “a community of Christians,” but it may be sufficient to note that someone in China sees enough evidence or knows enough history to believe that she still has a strong streak of Christianity in her. We hope so. We pray so.

## THE HOPE AND PROMISE OF DEMOCRACY

Faith. Family. Freedom. Big issues with great complexities. Big issues inextricably linked with the hope and promise of democracy. Big issues that are intertwined, interlinked, and interlocked so tightly that when one of them is struck, the other two are damaged; so that when one of them is cut, the other two will bleed.

Whatever our challenges, I take great encouragement in this thought from the most insightful observer of American culture who has ever written on the subject but who was (irony of ironies) not an American himself. Alexis de Tocqueville wrote: “The great privilege of the Americans does not simply consist in their being more enlightened than other nations, but in their being able to repair the faults they may commit.”<sup>23</sup>

Whatever our faults are, they can be repaired, and whatever our strengths are, they can be maintained. You are among the finest and best trained we have to defend, to advocate, to plead, and to appeal for the great faith, the strong families, and the religious freedom for which and upon which this republic was founded. God bless you in the powerful and virtuous practice of the law.

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# Instruments in His Hands: Doing This Great and Marvelous Work

This Annual  
J. Reuben Clark Law  
Society Fireside  
address was  
given on January  
25, 2013, in the  
Conference Center  
of The Church of  
Jesus Christ of  
Latter-day Saints  
in Salt Lake City.

I am humbled to have been invited to speak at this 2013 J. Reuben Clark Law Society Fireside. I do not see myself worthy to follow in the footsteps of past speakers like President James E. Faust; President Boyd K. Packer; Elders Dallin H. Oaks, Quentin L. Cook, and D. Todd Christofferson; and others. But I am nevertheless honored that the J. Reuben Clark Law Society extended the invitation to me to speak at this annual fireside.

ELDER LARRY ECHO HAWK  
OF THE QUORUM OF THE SEVENTY

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ILLUSTRATION BY JOSEPH ADOLPHE



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lthough I have feelings of inadequacy, I am comforted in knowing that I am among friends this evening. I had the privilege of teaching at J. Reuben Clark Law School for 14 years. Thus, present this evening are several members of the Law School faculty and staff with whom I have worked. There are also many graduates of the Law School whom I had the privilege of teaching who are either physically present or watching the broadcast at various locations throughout the world.

As I thought and prayed about this assignment, the impression came to me that I should simply speak about my spiritual roots, about why I became a lawyer, and about why I have felt blessed to work improving the lives of people I love. I have titled my remarks “Instruments in His Hands: Doing This Great and Marvelous Work.”

I will reminisce about my foundations in faith and the law. I trust that sharing some personal experiences will be helpful in reminding members of the J. Reuben Clark Law Society about our unique purpose of pursuing spiritual goals and improving the society in which we live. As I conclude my remarks I will recount some of the lessons I have learned that I believe will be particularly helpful to law students and young lawyers.

#### “This Great and Marvelous Work”

As a foundation for my remarks I turn to the Book of Mormon.

Beginning in chapter 17 in the book of Alma there is an account of the sons of Mosiah, who refused the kingdom their father desired to confer upon them and went up to the land of Nephi to preach to the Lamanites for 14 years. They had much success in bringing many to a knowledge of the truth.

Afterward Ammon recounted to his brothers the great success they had achieved, but his brother Aaron rebuked him, saying: “I fear that thy joy doth carry thee away unto boasting” (Alma 26:10).

Alma 26:11–15 sets forth Ammon’s response:

*But Ammon said unto him: I do not boast in my own strength, nor in my own wisdom; but behold, my joy is full, yea, my heart is brim with joy, and I will rejoice in my God.*

*Yea, I know that I am nothing; as to my strength I am weak; therefore I will not boast of myself, but I will boast of my God, for in his strength I can do all things; yea, behold, many mighty miracles we have wrought in this land, for which we will praise his name forever.*

*Behold, how many thousands of our brethren has he loosed from the pains of hell; and they are brought to sing redeeming love, and this because of the power of his word which is in us, therefore have we not great reason to rejoice?*

*Yea, we have reason to praise him forever, for he is the Most High God, and has loosed our brethren from the chains of hell.*

*Yea, they were encircled about with everlasting darkness and destruction; but behold, he has brought them into his everlasting light, yea, into everlasting salvation; and they are encircled about with the matchless bounty of his love; yea, and we have been instruments in his hands of doing this great and marvelous work.*

While serving as the assistant secretary of Indian Affairs in the United States Department of the Interior in Washington, D.C., I received a call one morning informing me that Phillip Baldwin, a 21-year-old Marine Corps corporal from the Fort Hall Indian Reservation in Idaho, had been severely wounded in combat in Afghanistan and was being cared for at the Bethesda Naval Hospital. Because I knew his family, I decided to cancel my appointments for the day and travel to the hospital to visit him. When I arrived I learned that he had lost both of his legs. After waiting for him to be brought out of surgery, I was able to visit briefly with him and lift his spirits.

A few months later Church members in Pocatello, Idaho, honored this young marine by selecting him to be the grand marshal in the 2012 Pioneer Day Parade. A luncheon in honor of Corporal Baldwin was held after the parade at the Bannock County

Fairgrounds, and I was invited to speak in my capacity as a General Authority.

In the process of walking into the fairgrounds that day and trying to make my way through a crowd of hundreds of people who were enjoying a variety of activities being held there, a young woman walked up to me. She looked up at me and said, “Are you Elder Echo Hawk?”

I responded, “Yes.”

Then she said, “My name is Leah Pearson. I was named after my grandfather.” A surge of emotion shot through me.

I will explain that surge of emotion by relating another experience I had about six weeks earlier. On the first Thursday of each month the General Authorities of the Church gather in a special room on the fourth floor of the Salt Lake Temple. June 7, 2012, was my first opportunity to attend this meeting as a new General Authority. As I entered that sacred room I sat down on the back row. A few minutes after the meeting started I heard my name called. President Thomas S. Monson asked me to come forward and bear my testimony. I arose, walked to the front of the room, stood next to the First Presidency—facing the Quorum of the Twelve Apostles, the seven presidents of the Seventy, the Presiding Bishopric, and the members of the Seventy who serve at Church headquarters—and bore my testimony.

I said that as a convert to the Church in my teenage years, it was beyond my wildest dreams to think that I would ever be called upon to serve as a General Authority and to stand in the Salt Lake Temple and bear my testimony before the prophets, seers, and revelators and General Authorities of the Church. I then said that this moment would not have been possible if it were not for Lee Pearson and Boyd Camphuysen, missionaries of The Church of Jesus Christ of Latter-day Saints who came into my home in Farmington, New Mexico, and taught my family the gospel of Jesus Christ. Those missionaries gave me a precious gift that changed my life.

### Spiritual Roots: The Book of Mormon

At age 17, in response to a challenge from my priest quorum advisor, I committed to read the Book of Mormon. This was no small task. I was not a good student, and I did not



Echo Hawk and his wife, Terry, (center) with family in 1992. Front, left to right: Emily (daughter), Braeden (grandson), and Jennifer (daughter). Back, left to right: Michael (son); Mark (son) and his wife, Dianna; Matt (son); and Stephanie and her husband, Paul (son).

read large books. But I promised the Lord in prayer that I would read at least 10 pages every day until I finished the book.

On the title page of *The Book of Mormon: Another Testament of Jesus Christ*, I read that it is “written to the Lamanites, who are a remnant of the house of Israel; and also to Jew and Gentile.” In the introduction it says that the Lamanites “are the principal ancestors of the American Indians.” As I read the Book of Mormon, it seemed to me that it was about my American Indian ancestors.

The Book of Mormon is an account of God’s dealings with these ancient inhabitants of this land of promise. Over the course of more than 2,000 years they fell away from the knowledge of the gospel of Jesus Christ. Their prophets foretold that many multitudes of Gentiles would eventually come to this land of promise, that the wrath of God would be upon the Lamanites, and that they would be scattered, smitten, and nearly destroyed (see 1 Nephi 13:10–14).

My Pawnee forefathers were forcibly removed from their homeland in what is now Nebraska. The population of Pawnee people declined from over 12,000 to less than 700 upon their arrival into the Oklahoma Indian Territory in 1874. The Pawnee, like other tribes, were scattered, smitten, and nearly destroyed.

As I read the Book of Mormon I learned that it has a special message for descendants of the Lamanites, a remnant of the house of Israel. Nephi expressed this message while interpreting his father’s vision of these latter days:

*And at that day shall the remnant of our seed know that they are of the house of Israel, and that they are the covenant people of the Lord; and then shall they know and come to the knowledge of their forefathers, and also to the knowledge of the gospel of their Redeemer, which was ministered unto their fathers by him; wherefore, they shall come to the knowledge of their Redeemer and the very points of his doctrine, that they may know how to come unto him and be saved. [1 Nephi 15:14]*

I kept my promise to the Lord. I completed my reading of the Book of Mormon in less than two months. As I finished, I focused on Moroni’s promise:

*And when ye shall receive these things, I would exhort you that ye would ask God, the Eternal Father, in the name of Christ, if these things are not true; and if ye shall ask with a sincere heart, with real intent, having faith in Christ, he will manifest the truth of it unto you, by the power of the Holy Ghost. [Moroni 10:4]*

As I knelt in prayer I received a powerful spiritual witness that the Book of Mormon is true. That witness has helped me chart my course through life.

For many years thereafter I annually read the Book of Mormon from cover to cover by reading at least 10 pages per day. Some years I have read it more than once, because when I had a major challenge facing me, I felt I needed the spiritual strength that comes from reading this sacred scripture.

The Book of Mormon was not the only source of inspiration and direction I received in those formative years of my life. President Spencer W. Kimball had a profound influence on my life, and he became my greatest mentor. I knew he had a deep and special love for the descendants of the people of the Book of Mormon, and I listened carefully to his words of counsel.

I kept in my Book of Mormon this excerpt from a talk he gave to a group of Indian students:

*In 1946 . . . I had a dream of your progress and development. Now, this is precisely what I dreamed; this was my vision for the people of the Lamanites. I got up from my bed and wrote my dream. . . . This is what I wrote:*

*As I looked into the future, I saw the Lamanites from the isles of the sea and the Americas rise to a great destiny. I saw great numbers of Lamanites and Nephites in beautiful homes that have all the comforts that science can afford. . . .*

*I saw the people of Lehi as engineers and builders, building lofty bridges and great edifices. I saw you in great political positions and functioning as administrators over the land. I saw many of you as heads of governments and of the counties and states and cities. I saw you in legislative positions, where as legislators and good Latter-day Saint citizens you were able to help make the best laws for your brethren and sisters.*

*I saw many of your sons becoming attorneys and helping solve the world's problems. I saw your people as owners of industries and factories. . . .*

*I saw [you as] doctors as well as . . . lawyers looking after . . . your people. . . .*

*Now, that was my dream. Maybe it was a vision. Maybe the Lord was showing to me what this great people would accomplish. [In Official Report of the Mexico City Area Conference*

*of The Church of Jesus Christ of Latter-day Saints: Held in the Sports Palace in Mexico City, Mexico, February 13, 1977 (Salt Lake City: The Church of Jesus Christ of Latter-day Saints, 1978), 31]*

## A Foundation of Law

I am now a General Authority of The Church of Jesus Christ of Latter-day Saints. I am a former Law School faculty member. I am also a Pawnee Indian who has spent many years of my life advocating for the rights of the first Americans and trying to lift them as a people.

I went to law school so that I could help my people. My first opportunity to serve Native Americans as a lawyer came at age 24. I worked for California Indian Legal Services in Berkeley, California. I subsequently developed an Indian law practice in Salt Lake City. At age 28 I achieved my goal of becoming a tribal attorney when I was retained as chief general legal counsel for the largest Indian tribe in Idaho, which is located on the Fort Hall Indian Reservation in southeast Idaho.

A new dimension in my efforts to protect and advance the rights of Native Americans started at age 34, when I was elected to the first of three public offices in state government in Idaho—as a member of the House of Representatives, as Bannock County prosecuting attorney, and as attorney general of the state of Idaho.

After serving 11 years in elective office, at age 46 I decided to run for governor of Idaho. I faced Phil Batt, a former lieutenant governor, in the general election. I had a lead in the polls all the way up to the November election.

The day before the election, Cecil Andrus, a four-term governor of Idaho, walked into my office in the State Capitol Building. He extended his hand and said, “I want to shake your hand. When you decided to run for governor, I thought you didn’t stand a chance. I was wrong. Tomorrow you will be elected governor of Idaho.”

However, the next night I found myself making a call to my opponent and congratulating him on his victory. Thereafter I stood before a large group of supporters and conceded the election. Strangely enough, at a



Echo Hawk sits at his desk on the chamber floor of the Idaho House of Representatives during his first session in 1983.

time when I should have been filled with great disappointment, I was filled with great peace.

The morning after the election I received a call from Reese Hansen, dean of J. Reuben Clark Law School. He said, “Sorry you didn’t win the election.” Then it seemed that in the next breath he said, “We would like you to come teach at the J. Reuben Clark Law School.” Dean Hansen recently told me that earlier that morning he had received a spiritual prompting to call me and invite me to join the faculty at the Law School.

Thus, following my unsuccessful campaign for governor of the state of Idaho, in January 1995 I became a professor of law at Brigham Young University. This suspended my active practice of law, but it gave me an opportunity to teach and influence a new generation of lawyers. I was particularly blessed to be able to teach Federal Indian Law in addition to Criminal Law, Evidence, and Criminal Procedure.

I have described my 14 years teaching at the Law School as the “perfect life.” I love Brigham Young University. I love J. Reuben



Echo Hawk poses with Idaho governor John V. Evans in 1984 at the signing of legislation creating the Indian Affairs Committee.

Clark Law School. I love the law. I love my colleagues. But most of all I loved my association with the students.

### Lifting a People of Promise

The beginning of the end of this full-time love affair at J. Reuben Clark Law School occurred in early January 2009. The people of the United States of America had elected a new president 10 weeks earlier. Barack Obama was nearing his inauguration as the 44th president of the United States. On January 13 I received a call from the Presidential Transition Team. The caller simply said, “We have an airline ticket for you, and we want to talk to you in Washington, D.C.” Since I had not had anything to do with Barack Obama’s campaign and I had not applied for any jobs, this was a complete surprise to me.

A few days later I sat in an office in Washington, D.C. Three men peppered me with questions for about an hour. No jobs were mentioned. Later that night I received a phone call, and the voice on the line said some very powerful words: “Your country is

calling you into service.” I was offered the nomination of the president of the United States to serve as assistant secretary in the Department of the Interior with responsibility for Indian Affairs.

To my wife’s credit, she immediately said, “We must do this.” But I hesitated. I hesitated because I knew that if I said yes, I would become “the face of the federal government” in Indian country, and there have been some dark chapters in American history in how the federal government has treated American Indians.

When I returned to Utah I went into my study and took a book off the shelf. I first read this book right after I graduated from law school at the University of Utah. It was a national best seller written by Dee Brown and titled *Bury My Heart at Wounded Knee*. I immediately read it again. I wanted to be reminded about those dark chapters in American history. The book covers the years from 1860 to 1890 and chronicles the military campaigns launched by the federal government to separate Indian tribes from their lands. Each chapter of the book describes how a particular tribe was treated unjustly.

Day after day that January, I was called from Washington, D.C., and asked if I would accept the nomination. Still pondering this appointment, I felt a need to talk to my priesthood leader. Serving as president of the BYU Seventh Stake, I reported to Elder Russell T. Osguthorpe of the Area Seventy. Calling him, I explained that I needed to speak to him because I was considering something that potentially could disrupt my service as a stake president. Elder Osguthorpe immediately came to my Law School office.

I remember that as I told Elder Osguthorpe about the struggle I was having in trying to decide if I should accept the call to serve, he raised his hand as a sign for me to stop talking. He then said, “I don’t think you know that I served as president of the South Dakota Rapid City Mission from 2003 to 2006.” He described how he had been on all of the Indian reservations located in his mission and was well aware of the terrible problems the people living in those communities faced. He then said, “You have to do this.”

After he left my office, I remember standing by the window looking out at Y Mountain. The thought came to my mind: “This is not about me. This is a chance to do a great amount of good for people in need.”

I accepted the call to serve.

As assistant secretary for Indian Affairs, I had the responsibility to represent the president of the United States in dealing with 566 tribal nations. I exercised authority over the Bureau of Indian Affairs. I had trust-management responsibility over 56 million acres of Indian lands. I also presided over the Bureau of Indian Education, which included responsibility over 183 schools (grades K–12), 27 tribal colleges, two technical colleges, and two universities. I had authority over nearly 10,000 employees and a budget of \$2.5 billion.

On my first day on the job I walked down the Hall of Tribal Nations, where my office was located in the Department of the Interior, feeling like an endangered species. I felt that insecurity because, in the eight years prior to my arrival, seven people had held the job of assistant secretary for Indian Affairs (either as Senate confirmed or in an acting capacity).

It was the most difficult job I have ever had. But it was also the most satisfying job I have



Echo Hawk (second from left), assistant secretary for Indian Affairs, in 2010 with (to his left) Mike Black, director of the Bureau of Indian Affairs; Ken Salazar, secretary of the Interior; Keith Moore, director of the Bureau of Indian Education; and staff.

ever had because of the enormous opportunity to actually do things that would help people who had suffered for generations.

I was empowered by my knowledge of law. I had taught Federal Indian Law 23 times. I could sit in meetings and hold my own because I had a good understanding about the powers of the federal government and the rights of tribal governments and Indian people.

I was also emboldened by the fact that Brigham Young University had granted me leave—I knew that I would be able to go right back to teaching at the Law School if I was forced to leave my position in Indian Affairs. Consequently, I was not afraid to do what was right. I was fearless and committed.

I wanted to do what was right and just, not only for the first Americans but for America itself. I wanted to help write new and brighter chapters in American history.

Perhaps, more important, I had vision and purpose. Shortly after taking on this challenge, I did what I had done many times before in my life: I read the Book of Mormon—again and again. This strengthened my determination to do all I could to lift a people of promise.

Tribal leaders and Indian Affairs employees knew I was a member of The Church of Jesus Christ of Latter-day Saints. I was glad they did. I tried my best to uphold high standards of personal conduct and to show them I truly cared through my actions in their behalf.

From 2009 through 2012 Democrats and Republicans worked together to deliver an impressive array of accomplishments in an extraordinarily difficult time. I do not have time to lay out everything we did, but suffice it to say that great strides were made in restoring lands to Indian tribes, settling historic Indian claims against the United States, enacting comprehensive legislation to make Indian communities a safer place to live, building new schools on tribal homelands, spurring economic development and job creation, and resolving several contentious disputes over Indian water rights. Thus, President Obama and the United States Congress will likely go down in history as having the strongest record of achievement on behalf of Native Americans within any four-year period.

This was not about partisan politics. This was a matter of living up to the self-imposed promises and legal obligations of the United States of America. As I advocated

for American Indians, I often quoted Justice Hugo Black: “Great nations, like great men, should keep their word.”

I do not know exactly how or when all the prophecies concerning the descendants of the people of the Book of Mormon will be realized, but I felt like the work I was doing as assistant secretary for Indian Affairs was helping to fulfill the promises of the Book of Mormon.

I intended to serve through President Obama’s first term and then return to teach at J. Reuben Clark Law School. However, on February 3, 2012, President Henry B. Eyring extended the call to serve as a member of the First Quorum of the Seventy. After I said we would accept the call to serve, President Eyring said that he sensed I had feelings of inadequacy. I acknowledged that was true. He said, “We all felt like that when we received our call to serve.” He then assured me that there was a reason the Lord had called me to serve as a General Authority and that the Lord will qualify whom He calls.

### Instruments in His Hands Through the Practice of Law

My brothers and sisters, as I stand before you tonight “I know that I am nothing; as to my strength I am weak,” but I have faith that in the strength of the Lord we “can do all things” He asks us to do (Alma 26:12).

Terry and I love the Lord, and we will give Him our best efforts. Our lives are now consecrated in His service. We love all of God’s children, and we stand ready to serve them all, wherever we are called to serve.

If the Lord sees fit for me to use my many years of experience and knowledge of the laws affecting Native Americans, I will be especially pleased to continue to follow the “blueprint” that was given to me nearly 40 years ago by Spencer W. Kimball, a prophet of the Lord.

As members of the J. Reuben Clark Law Society, we all need to have a divinely inspired blueprint so that we can use our talents and education to fulfill the Lord’s purposes. We have “the power of his word [within] us” (Alma 26:13). We have also been blessed to have the power of a legal education.

Where much is given much is expected. The Lord needs spiritual men and women



"Today's action should give American Indians and Alaska Natives assurance that the Obama administration is serious about preserving and protecting their cultural property," said Assistant Secretary for Indian Affairs Larry Echo Hawk at a press conference in 2009 after 24 were indicted for theft of American Indian artifacts. Left to right are Utah FBI Field Office Special Agent in Charge Timothy Fuhrman, U.S. Attorney in Utah Brett Tolman, Echo Hawk, Secretary of the Interior Kenneth Salazar, and Deputy Attorney General David Ogden.

who are trained in law. Spiritual power, coupled with the power of a legal education, prepares us to accomplish the Lord's purposes. We can and should be "instruments in his hands [in] doing this great and marvelous work" (Alma 26:15).

We will be accountable for what we have done or not done for the Lord's cause. We must be willing to give of our time, talents, and legal expertise to build the kingdom of God on the face of the earth.

President Marion G. Romney stated that a principal purpose of J. Reuben Clark Law School is to facilitate the study of the "laws of . . . man" in the light of the "laws of God" ("Becoming J. Reuben Clark's Law School," opening remarks on the first day of classes at J. Reuben Clark Law School, 27 August 1973; quoting Doctrine and Covenants 93:53).

The mission statement of the J. Reuben Clark Law Society states: "We affirm the

strength brought to the law by a lawyer's personal religious conviction. We strive through public service and professional excellence to promote fairness and virtue founded on the rule of law."

President James E. Faust stated that "there is a higher standard of conduct expected of the graduates of the Law School and members of this Law Society." He also said: "Our lawyers need to be more than successful advocates. We need to bring our sacred religious convictions and standards to the practice of law" ("Be Healers," *Clark Memorandum*, spring 2003, 3, 5).

There is great power in having members of the J. Reuben Clark Law Society participating in the processes of government and public service. We have a responsibility to try to improve the society in which we live. We must be willing to participate in the processes of federal, state, and local

government in pursuit of worthy causes and appropriate spiritual goals.

Finally, as we are now receiving much public attention, it is vitally important that we be good examples of what it is like to live a Christlike life. We must hold to our values and truly be lights unto the world.

I have shared my personal journey of service as a lawyer, professor, and public servant with the intent to issue a special challenge to law students and young lawyers to have a spiritually based blueprint to guide you toward a meaningful life of service to God and His children.

As we come unto our Savior, Jesus Christ, and purify our hearts, we will all be instruments in fulfilling God's great plan of salvation for all mankind and the mighty promises of the Book of Mormon. Of this I testify in the sacred name of Jesus Christ, amen.

Scott W. Cameron first came to BYU Law School as a student in the charter class. He returned 13 years later to head up admissions, serve as liaison for the Law Society and for the Alumni Association, envision and enlarge the Clark Memorandum, and work as associate dean for external relations, serving with four deans. Retiring after 24 years with the Law School, Dean Cameron takes a look back.



## FAREWELL TO ST. REUBEN'S

INTERVIEW BY JANE H. WISE

### **Why did you choose to attend BYU Law School?**

I was teaching at Ricks College when I received a letter from Bruce Hafen asking me to apply to be in BYU Law School's charter class. A friend of mine, Lew Cramer, whom I knew from Stanford, had suggested I might apply. I really wanted to get a PhD in English, but there was a glut in the market. I was also interested in university administration. I thought a doctorate in education wouldn't give me a lot of new skills but that a law degree might.

When I told Bruce that I hadn't taken the LSAT, he said, "It's being given next Saturday. See if you can sign up for it."

So I drove to Salt Lake City and took the LSAT cold.

Law school didn't come easily. I loved reading the cases because I loved the facts, but I wasn't as interested in the law. If the first semester exams had been on facts, I'm sure I would have done very well, but I didn't understand that we were supposed to focus on the progression of legal principles.

One day I was playing tennis with a left-handed friend who was playing right-handed. I asked him why he was playing right-handed. He replied, "Scott, why are you in law school?"

### **What was the Law School like when you attended (1973-76)?**

For its first two years the Law School was held in the little Catholic school, St. Francis of Assisi, on Ninth East. I love that the Law School started there because St. Francis of Assisi had turned away from wealth to a very simple life in order to benefit others. We used to call the school St. Reuben's for J. Reuben Clark.

But things were cramped there. Instead of study carrels we had banquet tables—the kind used at ward dinners—sectioned into four places with tape. All the books were kept in the small auditorium, which Rex Lee called "the great hall." Everything was constricted. There was no place to hide. We definitely got to know one another and the faculty.

It was a great learning environment and a great pioneering effort. That's the way Rex Lee sold it to us: we were part of a great adventure; we were starting something new and exciting; we were lucky to be part of this group.

On graduation day there were only about seven students who had jobs. The rest of us had confidence in our degree, studied hard for the bar, and spent time knocking on doors. Even though a lot of effort had gone into helping us, it took a while to break through and be competitive in the market.

### **Was there an alumni association then?**

The Alumni Association wasn't formally organized until 14 years after we had graduated. The Law School engaged the larger LDS legal community by starting the Board of Visitors, inviting prominent attorneys across the country to come give advice and assist students.

The idea for the Law Society came from a meeting between Dean Bruce Hafen and Ralph Hardy in Washington, D.C., in 1987. Hardy commented that although he had attended law school at Boalt Hall, people thought that as a Mormon he must have graduated from BYU Law School. He opined that, therefore, it was important to his own career that BYU Law School be as strong as possible. Dean Hafen felt the help of attorneys like Hardy would be essential to making that happen, and the two agreed that cooperation between the fledgling Law School and LDS attorneys would be mutually beneficial. Out of that conversation the J. Reuben Clark Law Society began to take shape.

Another early leader of the Law Society, Gary Anderson,

was also a graduate from Boalt Hall. When he started practicing law in San Francisco, there were no Latter-day Saint attorneys who were active in the Church who could provide excellent attorney-examples of living a balanced life. He felt that the establishment of the Law Society would provide those examples. One of the strengths of the Law Society today is mentoring new attorneys. They are introduced to clerks of the court and to judges and are acclimated to a new legal community. They have someone to talk to and consult with and someone to give them encouragement.

To keep the Law Society from stepping on the toes of other law schools that valued their LDS alumni, the Law School started the Alumni Association to raise money, engender loyalty, and make certain that the needs of graduates are met.

### **How did you come to work at the Law School?**

Before I came to the Law School in 1989 I was assistant superintendent of schools for Utah and the federal liaison officer. I spent time every month in Washington, D.C., trying to influence federal legislation on behalf of education in Utah.

It was then that the Law School's assistant dean over admissions decided to go back into private practice, and the Law School was looking to expand his position. I was asked to interview for the job.

I replied that I couldn't because I would be in Washington, D.C.

This was just after Rex Lee was named president of BYU, and several alumni were going to have a celebration for him in Washington, D.C. I was told to come to the reception.

When I went through the line, Rex said, "I'm so glad you're coming back to the Law School."

Reese Hansen was there and said, "We really need you."

I had taken a leave of absence from my law firm to work at the state office. But the practice of law was not a natural fit for me, just as law school had not been a natural fit.

I had always wanted to be in administration, and I had strong feelings about the Law School. So I accepted.

### **Describe your work as an administrator at the Law School.**

I was given the task of a utility infielder. I handled admissions and was over the fledgling Law Society that had been organized the previous year. In 1990 we started an alumni association. I also became the editor of the fledgling *Clark Memorandum*. I worked for almost 13 years doing all those things, and then I was called to preside over the Pennsylvania Pittsburg Mission. I came back 21 months later in an untimely way for an operation for cancer.

Dean Reese Hansen called me after learning that I had cancer. He said, "We haven't been able to exist without you at the Law School. You need to come back here." He did that even though there was no budgetary line for me.

My first day back was on a Thursday, and I had my first session of chemotherapy on Friday. I continued to work, taking Friday mornings off for chemotherapy. Coming back to the Law School was a lifesaver because it was hard to adjust to being back and to my illness.

### **What is your history with the Clark Memorandum?**

The *Clark Memorandum* had its start under Dean Hafen, with the

first issue published in 1986. We didn't have any writers, so we had to work hard to find materials. Then I thought of using the speeches given at the Law School or to the J. Reuben Clark Law Society, and that became the format.

The graphics have always been wonderful because BYU Publications & Graphics does such an excellent job. But because this was something we did on a shoestring with no staff, there has been a progression in terms of quality and content. Now people want to be in the *Clark Memorandum*, and it has won many awards—almost one for every issue.

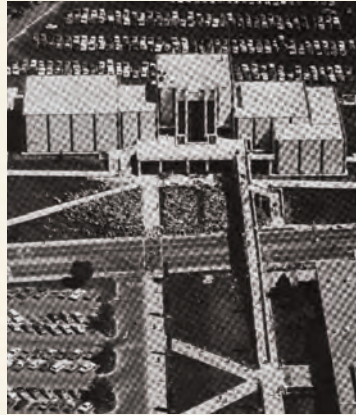
On one occasion a Law School acquaintance said, somewhat dismissively, "The *Clark Memorandum* is little more than an *Ensign* for attorneys." I thought what a great compliment that was. From the beginning the founders of the Law School and the organizers of the Law Society desired that graduates and society members honor the religious dimension of their lives, believing that doing so makes a lawyer better and more ethical in his or her work. I hope the *Clark Memorandum* has filled a niche in people's lives that other alumni or scholarly publications haven't met.

### **What do you anticipate your ties to the Law School will be after you retire?**

After I return from a two-year mission for the Church as director of the Mesa Arizona Temple Visitors' Center, I anticipate staying close to the Law School and the Law Society. I have also enjoyed my work with the International Center for Law and Religion Studies and hope to continue to work for the center as a volunteer.

## Becoming J. Reuben Clark's Law School

The first three classes of law students attended the dedication of the Law School's new home on September 5, 1975. ▼



Affectionately called St. Reuben's, this former Catholic school housed the Law School for its first two years in 1973-75. ▼



▲ The Law School expanded in 1995-97 to accommodate a larger library, subsequently named the Howard W. Hunter Law Library.



▲ The bridge and patio were erected on the west side of the new law school building in 1975.

▲ The patio and bridge were demolished in May 2013 as part of a project to unify campus. The road west of the Law School was also removed and replaced with a plaza.

The *Clark Memorandum* welcomes the submission of short essays and anecdotes from its readers. Send your article (650 words or fewer) for "Life in the Law" to [wisej@law.byu.edu](mailto:wisej@law.byu.edu).

**Clark Memorandum**

J. Reuben Clark Law School  
Brigham Young University

