

Spring 2016

# Clark Memorandum: Spring 2016

J. Reuben Clark Law School

BYU Law School Alumni Association

J. Reuben Clark Law Society

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CLARK MEMORANDUM

J. Reuben Clark

Law School

Brigham Young

University

Spring 2016



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DEAR ALUMNI AND FRIENDS,

**B**ecause my “Law and Perspective” address leads this issue of the *Clark Memorandum*, I feel a bit as though I am taking more than my share of this issue, but I hope you will indulge me, because this will be my last opportunity to pen a Dean’s Message before I step down as dean this summer.

Serving as dean of this great law school has been the highlight of my professional life. It has been a great blessing to work alongside faculty colleagues, administrators, staff, students, alumni, and friends who share a sense of ownership and commitment to the ennobling project of building a great LDS law school. On a personal level, I am grateful for your friendship and support.

I finish my time as dean recognizing that there is still much to do. It seems to be part of the nature of all climbing that reaching the top of one crest simply reveals that there are mountains still to scale. I have every confidence that our best days are ahead of us and that the leadership change will be invigorating for the Law School as we seek to climb the mountains ahead.

**It seems to be part of the nature of all climbing that reaching the top of one crest simply reveals that there are mountains still to scale.**

In those areas where I have fallen short, I will simply have to be comforted by my family’s motto, which actually comes from my grandfather’s funeral. My grandfather grew up logging the forests of northern Sweden until he met Mormon missionaries as a teenager, joined the Church, and immigrated to the United States. He spoke English with a heavy accent throughout his life and, despite being a good and generous soul, was not always fully orthodox in his Church membership. A ward member invited to speak at his funeral didn’t turn out to be a big fan, because he began by saying, “We are here to honor John Johnson, who did, though not

well, the best he could.” You can be sure that my mother and her siblings did not initially find this humorous, but it has become a wonderful family motto: “We do, though not well, the best we can.” Resolving that this would be on our family crest took some real discussion as we weighed it against several contenders that gleaned strong support:

- “Hard work has a future payoff, but laziness pays off right now.”
- “If at first you don’t succeed, destroy all evidence that you tried.”
- “Eagles may soar, but weasels don’t get sucked into jet engines.”

Okay, the family crest discussion part isn’t true, but the rest is.

I am excited about what lies ahead for the Law School and for me personally. Being a member of the faculty of J. Reuben Clark Law School was my greatest professional aspiration, and after a leave to reinvigorate a scholarly agenda that I have let lapse during my time in administration, I look forward to returning to the faculty and resuming a full teaching load. Although I have learned much during my service about the importance of administration, I continue to believe that a great law school is primarily a function of the quality of its students and the quality of its faculty. And we are lucky to have extraordinary students and an accomplished and devoted faculty.

In 1973 Elder Dallin H. Oaks (then president of the university) commented on the very first day of classes that “the special mission of this law school and its graduates will unfold in time.” During my travels as dean, I have seen that mission unfolding in the lives of our alumni all over the country, indeed, all over the world. I am excited to continue to watch that process unfold as our graduates use their legal training to serve as leaders and healers and as the faculty faithfully labor to have an enduring influence through their teaching and scholarship.

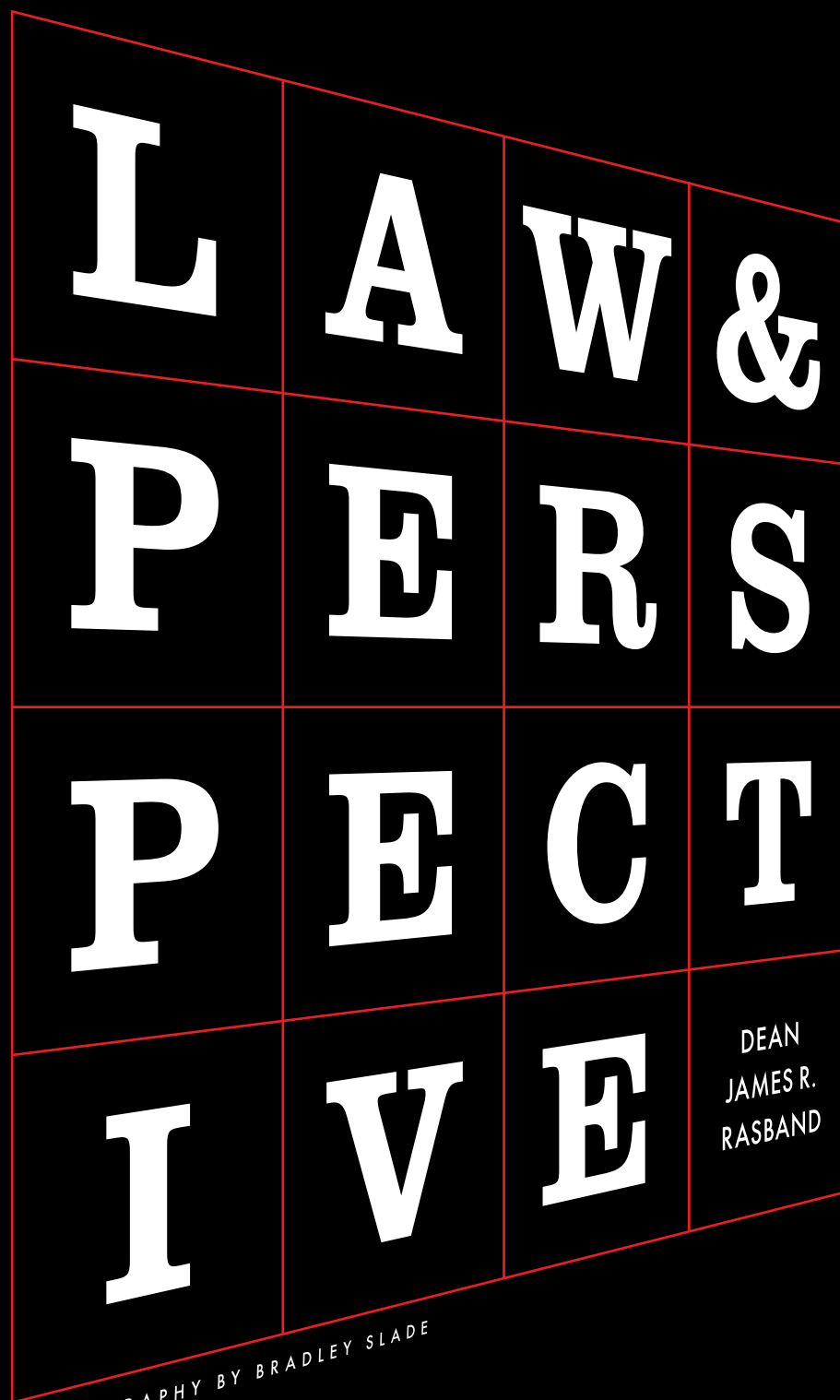
As I close my final Dean’s Message, I share one of my favorite passages in the Old Testament, from the Book of Numbers, as my hope for all of our graduates and for our colleagues and friends within the Law Society: “The Lord bless thee, and keep thee: The Lord make his face shine upon thee, and be gracious unto thee: The Lord lift up his countenance upon thee, and give thee peace” (Numbers 6:24–26).

Warm regards,



JAMES R. RASBAND





PHOTOGRAPHY BY BRADLEY SLADE

DEAN  
JAMES R.  
RASBAND

YOUR  
STUDY  
OF LAW WILL  
GIVE YOU  
PERSPECTIVE  
AND WILL  
ALLOW YOU TO  
SEE AND  
UNDERSTAND  
LIFE AND  
ITS PROBLEMS  
AND CHALL-  
ENGES WITH  
GREATER  
CLARITY.



*Ashley Smith, 1L, is a professional singer/songwriter who has brought her talents to the Law School.*

**O**n behalf of my faculty colleagues and the administration and staff, I welcome you to J. Reuben Clark Law School. Of the many choices and opportunities you had, I am convinced you have chosen well by enrolling here. You are about to embark on the adventure of a lifetime.

I have titled my remarks “Law and Perspective.” The word *perspective* comes from the Latin *perspectus* or *perspicio*, which means “to look through” or “see clearly.” Webster’s defines *perspective* as “the capacity to view things in their true relations or relative importance.” My belief and my hope for each of you is that your study of law will give you perspective and will allow you to see and understand life and its problems and challenges with greater clarity. It is that vision, insight, and perspective that will make you leaders and will enable you to compose disputes for those who lack perspective and cannot see a way through a vexing problem.

If you consider the nature of most graduate education, its purpose is to narrow your field of vision and train you as an expert in a particular field, the classic example of which is a dissertation on a narrow subject on which no one else has written. The study of law, by contrast, is designed to broaden your field of vision and equip you with the tools to make judgments across the full range of human experience.

For example, during this first semester you will study Tort Law, which is the law of personal injury, but our goal is not to turn everyone into expert personal-injury lawyers. Rather, the goal is to have you think about concepts like unreasonable risk, causation, and the scope of an individual’s responsibility in society. Similarly, you will take Property Law, where the goal is not to make sure you can write up a mortgage or a lease but to have you think about the nature of ownership—what makes something property? What limits can society place on our use of property? You will take Contracts, where the goal

is not to teach you how to write contracts but to have you think about why some agreements are binding and why others might not be, why it matters when someone takes action in reliance on the promise of another, and so forth.

Thus the goal of much of the study of law is not to create specific expertise but to teach broad principles that will allow you to handle the multitude of challenges that will find their way to you in the practice of law—or simply in the course of your life. Expertise is important: we are all grateful for expert physicians and expert bridge builders, and you will need to develop plenty of expertise as lawyers, which is why we have a robust curriculum of professional skills. But the core of your first-year experience is designed to broaden your perspective and field of vision.

There may be times in your classes when you are tempted to say, “Stop with all the theory; stop the talk about what the law should or could be; stop with the underlying policy and philosophy. Just tell us what the rule is or how this applies to the exam.” I hope you will understand why the faculty members resist that plea. Although it is common to hear concerns that law faculty “hide the ball” by not simply laying out the black-letter law, please understand that what they are trying to do is teach you that it is more important to understand why a ball might disappear in the bright sun or how a ball might shift in reaction to a gust of wind than to make sure the ball ends up in your glove. The truth is that once you understand speed, trajectory, wind, and sun, you’ll end up catching a lot more balls.

I am not sure if many of you are golf fans, but you have probably seen that when a golfer has an important putt, he or she will spend time viewing the putt from a variety of different angles or perspectives to figure out how the putt will break. Legal education seeks to increase your perspective in the same way. The more perspectives you see and understand, the more likely it is that you will design the right rule or the right solution for your client. Thus, in addition to helping you focus on the principles that underlie legal rules, Socratic questioning is intended to help you see a problem from different perspectives and better triangulate a workable solution.

Your classmates’ perspectives and opinions will be an essential part of how you increase your perspective and how you learn to see problems from different angles. Because you and your classmates come from different backgrounds and have had different life experiences, it is likely—indeed certain—that you will not always see eye to eye about which rules are best for ordering society. Sometimes it can be frustrating to have your views challenged, but—in the parlance of the

*This address  
was delivered on  
August 19,  
2015, to  
entering  
BYU Law  
students.*



day—that part of legal education is a feature, not a bug. In law practice, whether in deal making or in litigation, once you understand the concerns animating the “other side,” it is much easier to find an acceptable resolution. And even if you cannot find a solution, you will better understand the nature of a just resolution to the dispute.

### **Be a Good Shepherd, Not a Hireling**

As you embark on a career as a professional—and, frankly, as a student and in every aspect of your life—I hope you will remember a lesson on perspective taught by the Savior in the parable of the good shepherd in John 10. Jesus described a difference between a good shepherd and a hireling: a hireling is someone who is paid to care for the sheep, as opposed to the shepherd, who owns the sheep. As Christ described, when the wolf comes, the hireling “leaveth the sheep, and fleeth.” Why does the hireling run away? Because, Jesus said, “[his] own the sheep are not.” By contrast, He said of Himself, “I am the good shepherd. . . . I lay down my life for the sheep” (John 10:12, 14–15).

Let me suggest that choosing the perspective of the shepherd rather than that of the hireling will be the key to success in almost every setting in which you find yourself, including employment. I still remember when I headed off to my first job at age 14 as a stocker and checker at the Carmel Drive-In Market in my hometown of Carmel, California. My father took me aside and told me that there were two ways to look at any job: I could have an employee’s mentality or an owner’s mentality. As he described it, employees are focused on making sure that they are fully compensated for everything they do and that the boss never impinge upon their free time. My dad explained that if you insist on getting paid for everything you do, that is precisely what will happen—you will be paid for everything you do, but only that. If, on the other hand, you have an owner’s perspective and if you act like the failure or success of the business depends upon you, then you will eventually be the owner.

I think I said something like, “Dad, I don’t want to own the Carmel Drive-In Market. I’m only going to be stocking shelves and spraying lettuce. Then I’ll be on my way to the beach.” My attitude was precisely his concern. Now, of course, my dad’s goal was not that I would someday own the Carmel Drive-In Market. He



*Crystal Powell, 1L,  
is a single mother who  
left a successful job  
in Jamaica to come to  
law school at BYU.*



*Born in Seoul, South Korea, and now a Canadian citizen, Minji Kim, 1L, has come to study law at BYU.*

was teaching a truth about every setting in which I would find myself: to be successful I had to seek to build up the organizations of which I was a part—I had to have the perspective of an owner rather than of just a hireling.

I am not sure I have always succeeded at that, and it is certainly easier to do with some jobs than with others. But his point was an important one. In the workplace it may be tempting to think you are a mere employee and that the scope of your duty is to complete the assignments given. I would encourage you to give more. Think of yourself as the owner of the enterprise in which you work. Don't worry about doing more than your "share." In fact I hope it will be said of BYU lawyers that they always do more than their share, that they pick up the slack for others, and that they can be counted on to ensure work is of the highest quality.

Understanding the shepherd versus hireling perspective is also important in your relationships with clients. If you see a client as an opportunity to churn some billable hours, you will just be paid for your billable hours. But if you see the client as a person who needs your help, if you make his or her problem your own and look for a way to resolve it, and if you don't look to charge for every last hour, you will be paid many times over with satisfaction, with a relationship, and, yes, with additional billable hours.

I probably ought to clarify what I mean by making a client's problems your own. When a client, a member of your congregation, or a family member comes to you, they are often frustrated, burdened, and unable to see a way forward. A shepherd lawyer is one who mourns with the client, comforts the client, and bears the client's burdens so that he or she can feel some peace amidst the uncertainty and anxiety. This does not mean you are charged with simply doing whatever the client asks of you. A shepherd lawyer, as opposed to a hireling lawyer, also takes seriously his or her role as a counselor. Lawyers are not just zealous advocates; they have a duty to help clients understand the path that will bring them the greatest peace. Sometimes that will mean convincing a client that litigation is not the answer. Sometimes it will suggest compromise. Sometimes it will mean dissuading a client from embarking on a risky or dishonest course of action. In the end, good counseling only comes with clear perspective.

In addition to in the workplace and with your clients, I hope you will see yourselves as owners of this law school rather than merely consumers. You inherit an extraordinary legacy of students and faculty who have gone before you, but you will also create a legacy. I hope you will see the Law School as a project whose success depends upon you. I hope that you will invest in study, in preparation, and in the class conversation as though the class's success depends upon you.

Now, I recognize that doing more than your share in your employment and being quick to bear the burdens of clients is not easy and is not without risk to other important values. We know, for example, that being a shepherd in our families is even more critical. And when

*David Wiseman, J.L.,  
worked as a Latin  
American and Iberian  
studies librarian at  
BYU before beginning  
law school.*

we add Church and civic responsibilities to the list of organizations in which we are to act like an owner rather than a hireling, it can feel quite daunting. I do not have a ready answer for how to balance all these competing demands. Partly, I think that is okay. Allocating our time and energy is one of those things we are supposed to learn by our experience. We won't always get it right.

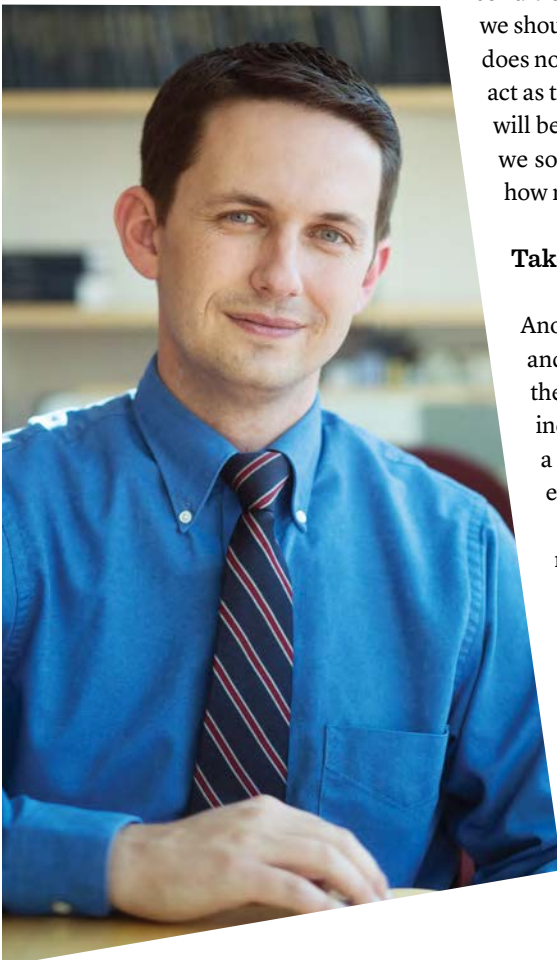
Sometimes we talk about balance as though it is a steady state where we figure it all out and then move forward effortlessly. In my own experience, it is much more like sailing: we tack this way and then that way as we try to move forward in all kinds of winds and conditions. But if we don't always tack exactly when we should and we don't always sail the perfect course, it does not invalidate the underlying principle that when we act as the owner or shepherd, our success and satisfaction will be greater. We will reap the harvest of the perspective we sow. Our daunting task is to choose which harvest, or how much of so many good harvests, we want to reap.

### **Take a Long-Term Perspective**

Another key part of perspective that you will need in law school and in the practice of law is a focus on the long-term rather than the short-term. The most important project of a legal education—indeed, the most critical project of all education and of our lives—is a long-term one. President Spencer W. Kimball once said that the entire project of BYU was to produce “education for eternity.”

If you have a long-term perspective, you are willing to risk embarrassment in the classroom, to raise your hand and give your view of a judge's reasoning, or to answer a perplexing question posed by a faculty member. Please do not worry about making mistakes. If you leave your intellectual ship safely in the dock and never attempt to sail, it will do you little good. It is the sailing that gives you the experience. Be willing to take risks in class. Be willing to talk to your professors outside of class. These opportunities are among the great privileges of a legal education at BYU, and I hope you take advantage of them.

Remember that most embarrassment is short term. You've probably heard the Mark Twain quote “Humor is tragedy plus time.” You will look back and





IT IS A GREAT PRIVILEGE...TO ENGAGE IN  
CONVERSATION AND STUDY OF THE LAWS OF MEN  
IN THE PERSPECTIVE OF THE LIGHT OF  
THE LAWS OF GOD.

chuckle about silly things you or a classmate or a faculty member said. We all do.

If you have a long-term perspective, you will also treat classmates as lifetime colleagues. You may have the better of the argument today, but that may not be true tomorrow. Before I pen a snarky post or hit send on a snide email, I can ask myself how it might read in six months or if there is possibly a different way of understanding the issue.

Likewise, professionally, when interacting with opposing counsel, remember that this case may not be your last one against them. If they ask for some slack on a scheduling matter because of a family issue, you should know that someday you may need the same kindness.

If you have a long-term perspective, you are also better equipped to face ethical challenges. Most ethical lapses occur in a moment of deadline panic when short-term fear of failure, such as not turning in a brief or a paper, can lead to dishonesty—such as plagiarizing a page or two. Don't let the short-term gain trump the long-term benefits associated with a reputation for integrity.

### Pursue Law in the Light

If seeing the relative importance of events clearly requires a long-term perspective, clarity of vision depends even more on light. It is hard to perceive that which we cannot see. The fears and phantoms of night are dispersed by the light of dawn.

As some of you may be aware, the Law School has as its mission “to teach the laws of men in the light of the laws of God.” This mission comes from some remarks of President Marion G. Romney on the very first day of classes at this law school in 1973. I have always thought it was a beautiful way to express the project of BYU Law, but frankly, it is challenging to discern precisely what is meant by studying the laws of men in the light of the laws of God.

It is interesting to me that he did not say that our task was to study the laws of men *and* the laws of God. The exhortation was to study the law “*in* the light of the laws of God.” His words are echoed in Psalm 36:9: “For with thee is the fountain of life: in thy light shall we see light.” A similar idea is set forth in Doctrine and

Covenants 88:67: “That body which is filled with light comprehendeth all things.”

There is a lot to unpack in the Law School's mission statement. I have suggested before that the focus on pursuing law in the light suggests that our task is to pursue truth. The reference to the light of God's law also hints at the long-term—or, more appropriately, the *eternal*—perspective that I have already suggested should guide your approach to the study and practice of law.

But as I have thought more about our mission statement, I am convinced that studying law *in* the light of the laws of God also suggests that the laws of God cast light upon and clarify the wisdom of the laws of men and that we should not shy away from inquiring how the two match up. Of course, that process will not always be clear, particularly when we must weigh laws of God that are necessarily in tension in a pluralistic society. As one simple example, how ought we to judge blue laws that restrict certain activities on Sunday? Such laws are seemingly aligned with God's law of the Sabbath, but what about the doctrine set forth in the 11th article of faith that while we claim the privilege of worshipping God according to the dictates of our own conscience, we allow all men that same privilege?


Not only are we faced with resolving issues where principles are in some tension but also where there is—because God's laws tend to focus on principles rather than on specific applications—a wide range of laws and social ordering in which we are left to our own devices to learn by hard experience what is the wisest and best policy. But if the appropriate correspondence between the laws of men and the laws of God is not always easy to discern, that should not be troubling; instead, it should be humbling to think about how much we have to learn. It is a great privilege—and a challenge from which we should not shy away—to engage in conversation and study of the laws of men in the perspective of the light of the laws of God.



### Remember Those in the Last Wagon

If our perspective and vision are enabled by the light of God's law, one more thing will be true: our perspective and concern will reach beyond ourselves to others. At the Law School we sometimes talk about this in terms of helping those in "the last wagon." As you are aware, the official name of the Law School is J. Reuben Clark Law School, named after J. Reuben Clark Jr., who was a counselor in the First Presidency under President David O. McKay. Earlier this morning you watched a DVD that taught you a little about J. Reuben Clark. Toward the end of the DVD, you may recall hearing an excerpt from what was perhaps his most famous general conference address, titled "To Them of the Last Wagon." President Clark recounted the struggles and sacrifices of the common pioneer Saints, who, without the resources of the leaders, struggled faithfully across the plains in the last wagon of every wagon train. He then exhorted the Church to remember those in the last wagon.

Your legal training will place you among those in the first wagons of society, and others will look to you for counsel, advice, comfort, and healing. The legal education upon which you embark today will give you significant power and influence in society—indeed, in almost any group of which you are a part. As dean of this law school, this is precisely what I want. I want you to be influential leaders. But as you wield your influence, I hope your perspective and your field of vision will always include the least of these—those in the last wagon.

As I said when I began, I am convinced that law school was a wise choice for you, and I am grateful that you have decided to join us at J. Reuben Clark Law School. Our communities, our society, and our respective faiths need the talents, skills, principles, and perspectives you will learn and develop over the next three years. My colleagues and I are excited to join you in what I hope will be one of the most fulfilling and ennobling challenges of your life. Welcome to J. Reuben Clark Law School. 

*Sarah Bodily, 1L,  
played soccer  
for BYU–Hawaii  
before coming  
to law school at BYU.*





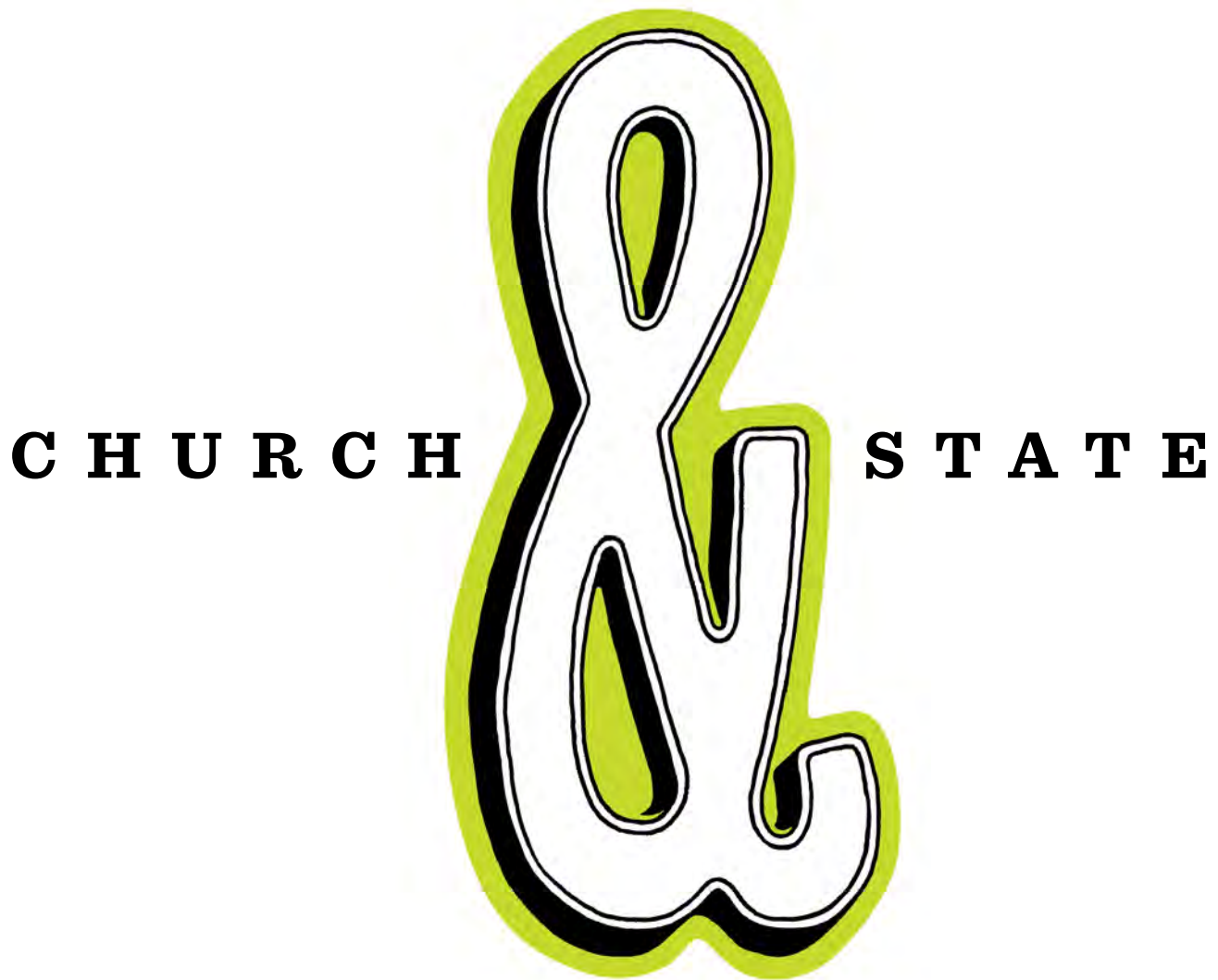


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Elder Dallin H. Oaks

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THE BOUNDARY BETWEEN



*The following address was given at  
the second annual Sacramento Court/Clergy  
Conference on October 20, 2015.*

ILLUSTRATIONS BY CHRISTIAN ROUX

## I appreciate the invitation to speak to this distinguished audience of religious leaders, judges, and lawyers.

**I** My purpose is to advance this conference's objective to be "a forum for mutual support, understanding, edification, and collaboration between the judiciary and regional communities of faith." I will, therefore, refrain from advocating my strongly held views on various issues affecting religious freedom. Instead, I will focus my remarks on two of your objectives: mutual understanding and edification.

I enjoyed reading the *Sacramento Lawyer's* report of the prior court/clergy conference. I was easily persuaded by Presiding Justice Vance W. Raye's description of the importance of judges understanding the role that religion plays in the lives of the American people; the importance of values—whether religious or secular—in shaping behavior; and the fact that churches, as institutions, offer an amazing panoply of resources to help people involved in the judicial system.<sup>1</sup> I will speak later of my appreciation for the remarks of Father Rodney Davis, retired appellate court justice, who spoke of "how deeply held religious beliefs of judges and litigants impact one's experience with the judicial system."<sup>2</sup>

While I was unable to attend this morning's welcome addresses, presentations, and breakout sessions, I hope that my remarks will further your discourse on our important concerns.

**II** I begin by speaking of the inevitable relationships between two different realms: the laws and institutions of government on the one hand and the principles (or "laws") and institutions of religion on the other. (By "religion" I refer to churches, synagogues, mosques, and others and to their adherents and affiliated organizations.) I will suggest how these inevitable relationships should affect the behavior of believers and nonbelievers toward one another and toward the two different sets of laws to which all must relate in one way or another.

My thesis is that we all want to live together in happiness, harmony, and peace. To achieve that common goal, and for all contending parties to achieve their most important personal goals, we must learn and practice mutual respect for others whose beliefs, values, and behaviors differ from our own. As Justice Oliver Wendell Holmes observed, the Constitution "is made for people of fundamentally differing views."<sup>3</sup>

Differences on precious fundamentals are with us forever. We must not let them disable our democracy or cripple our society. This does not anticipate that we will deny or abandon our differences but that we will learn to live with those laws, institutions, and persons who do not share them. We may have cultural differences, but we should not have "culture wars."

There should be no adversariness between believers and nonbelievers, and there should be no belligerence between religion and government. These two realms should have a

mutually supportive relationship. In that relationship governments and their laws can provide the essential protections for believers and religious organizations and their activities. Believers and religious organizations should recognize this and refrain from labeling governments and laws and officials as if they were inevitable enemies. On the other hand, those skeptical of or hostile to believers and their organizations should recognize the reality—borne out of experience—that religious principles and teachings and their organizations are here to stay<sup>4</sup> and that they can help create the conditions in which public laws and government institutions and their citizens flourish.

That perceptive observer of America Alexis de Tocqueville wrote that what sustained the unique American democracy were the voluntary associations like churches—today often called "mediating institutions"—that lead citizens to choose to obey laws that governments cannot enforce.<sup>5</sup> Even today our society is not held together primarily by law and its enforcement but, most important, by those who voluntarily obey the unenforceable because of their internalized norms of righteous or correct behavior. Some call this "civic virtue." It has various sources, but all should recognize the vital contribution of religion, because religious belief in right and wrong by a large number of citizens is fundamental to producing this essential voluntary compliance.

Of course there will be differences that must be resolved by the rule of law. But these occasional differences must not obscure the basic fact that we are in this together, we need each other, and we can resolve our differences through mutual respect, mutual understanding, and the collaboration you advocate as the purpose of this gathering.

When I first studied this subject in law school about 60 years ago, the popular metaphor of the relationship between church and state was that of a "wall of separation." Introduced into Supreme Court jurisprudence in the 1878 case *Reynolds v. United States*<sup>6</sup> and brought into mainstream vernacular in the 1947 *Everson* case,<sup>7</sup> this metaphor dominated discussions of the day.<sup>8</sup> It even found its way into the title of a book I edited in 1963.<sup>9</sup> That book is long out of print, but

the unfortunate connotations of the wall of separation metaphor persist to the present day. Those connotations inhibit the desirable collaboration that brings us together in this conference.

I reject the idea of a wall between church and state. The more appropriate metaphor to express that relation—reinforced by various decisions of the United States Supreme Court—is a *curtain* that defines boundaries but is not a barrier to the passage of light and love and mutual support from one side to the other.



I have viewed the boundary between church and state from both sides. I viewed it from the state side as a law clerk to Chief Justice Earl Warren of the United States Supreme Court, as a prosecutor in the state courts in Illinois, and still later as a justice on the Utah Supreme Court. From the church side, I have been a lifelong believer, teacher, counselor, and leader in my denomination. For me, questions about the relationship between government and religion are not academic, any more than the fate of Christian martyrs or the events of the Holocaust are academic to persons associated with them. My great-grandfather Harris—through whom I have my middle name—served time in the Utah Territorial Penitentiary for violation of a federal law intended to punish him for acting on his religious belief. Before that, my wife's great-great-grandfather Hyrum Smith was murdered in Illinois by an anti-Mormon mob.

Rejecting a wall of separation between church and state but affirming the need for a boundary, I will discuss that boundary and invite you to walk that center path with me.

I begin by suggesting a few general principles.

First, parties with different views on the relationship between church and state should advocate and act with civility. In this country we have a history of tolerant diversity—not perfect, but mostly effective at allowing persons with competing visions to live together in peace. We all want effective ways to resolve differences without anger and with mutual understanding and accommodation. We all lose when an

atmosphere of anger or hostility or contention prevails. We all lose when we cannot debate public policies without resorting to boycotts, firings, and intimidation of our adversaries.

Second, on the big issues that divide adversaries on these issues, both sides should seek a balance, not a total victory. For example, religionists should not seek a veto over all nondiscrimination laws that offend their religion, and the proponents of nondiscrimination should not seek a veto over all assertions of religious freedom. Both sides in big controversies like this should seek to understand the other's position and should seek practical accommodations that provide fairness for all and total dominance for neither.

For example, an influential article by Martha Minow of the Harvard Law School concludes that “[a]ccommodation and negotiation can identify practical solutions where abstract principles sometimes cannot.”<sup>10</sup> She observes that this approach “is highly relevant to sustaining and replenishing both American pluralism and constitutional protections for minority groups.”<sup>11</sup> Thus, in a head-on conflict over individual free exercise and enforced nondiscrimination in housing and employment, for example, the Utah Legislature crafted a compromise position under the banner of “fairness for all.” It gave neither position all that it sought but granted both positions benefits that probably could not have been obtained without the kind of balancing that is possible in the law-making branch but not in the judiciary.

Third, it will help if we are not led or unduly influenced by the extreme voices that are heard from contending positions. Extreme voices polarize and create resentment and fear by emphasizing what is nonnegotiable and suggesting that the desired outcome is to disable the adversary and achieve absolute victory. Such outcomes are rarely attainable and are never preferable to living together in mutual understanding and peace.

The Supreme Court bowed toward this principle in its majority opinion in *Obergefell*, the five-to-four case establishing a federal constitutional right to same-gender marriage. It implicitly rejected several argued bases for its decision, such as alleged animus in traditional marriage laws and the need for establishing a new suspect class for laws affecting those with same-gender attraction. Either of those bases for the decision would have complicated the kind of accommodation I advocate here. Just as important, the majority opinion also included some teachings that are particularly welcome to those who argued the losing position. Writing for the majority, Justice Anthony Kennedy acknowledged the reasonableness of the religious and philosophical premises of those who argue that marriage should be limited to a man and a woman and assured that the First Amendment will protect religious organizations and persons who continue to teach them.



In addition to these general principles, I have some suggestions for each contender in current struggles over the proper boundary between the different realms of church and state. I believe these suggestions advance the mutual understanding and collaboration we seek in this conference.

**A** I speak first to my fellow believers—those advocating the maximum free exercise of religion. I begin with the reminder that for believers, there are two different systems of law: divine and civil. While all believers revere divine law, most acknowledge that civil law is also ordained of God. The Lord Jesus Christ directed, “Render therefore unto Caesar the things which are Caesar’s; and unto God the things that are God’s” (Matthew 22:21). So taught, we must, to the extent possible, obey *both* systems of law. When there are apparent conflicts, we must seek to harmonize them. When they are truly irreconcilable, we should join with others of like mind in striving to change the civil law to accommodate the divine. In all events, we must be very measured before ever deciding—in the rarest of circumstances—to disregard one in favor of the other.

In that context, I say to my fellow believers that we should not assert the free exercise of religion to override every law and government action that could possibly be interpreted to infringe on institutional or personal religious freedom. As I have often said, the free exercise of religion obviously involves both the right to choose religious beliefs and affiliations and the right to *exercise* or practice those beliefs. But in a nation with citizens of many different



religious beliefs, the right of some to act upon their religious principles must be circumscribed by the government's responsibility to protect the health and safety of all. Otherwise, for example, the government could not protect its citizens' person or property from neighbors whose intentions include taking human life or stealing in circumstances purportedly rationalized by their religious beliefs.

Religious persons will often be most persuasive in political discourse by framing arguments and explaining the value of their positions in terms understandable to those who do not share their religious beliefs. All sides should seek to contribute to the reasoned discussion and compromise that are essential in a pluralistic society. And none should adopt an us versus them mentality.

Believers should also acknowledge the validity of constitutional laws. Even where they have challenged laws or practices on constitutional grounds, once those laws or practices have been sustained by the highest available authority, believers should acknowledge their validity and submit to them. It is better to try to live with an unjust law than to contribute to the anarchy that a young lawyer named Abraham Lincoln anticipated when he declared, "There is no grievance that is a fit object of redress by mob law."<sup>12</sup>

Clear cases for the application of this principle are the public officials in the executive or judicial branches who enforce and interpret the laws. All such officials take an oath to support the Constitution and the laws of their jurisdiction. That oath does not leave them free to use their official position to further their personal beliefs—religious or otherwise—to override the law. Office holders remain free to draw upon their personal beliefs and motivations and advocate their positions in the public square. But when acting as public officials, they are not free to apply personal convictions—religious or otherwise—in place of the defined responsibilities of their public offices. All government officers should exercise their civil authority according to the principles and within the limits of civil government. A county clerk's recent invoking of religious reasons to justify refusal by her office and staff to issue marriage licenses to same-gender couples violates this principle. Far more significant violations of the rule of law and democratic self-government occur when governors or attorneys general refuse to enforce or defend a law they oppose on personal grounds—secular or religious. Constitutional duties, including respect for the vital principle of separation of powers, are fundamental to the rule of law. Government officials must not apply these duties selectively according to their personal preferences—whatever their source.

This insistence that the constitutional and legal duties of the office override the religious or other moral scruples of the officeholder implies no compulsion on the officeholder's conscience. The operation of the government can continue when attorneys or other administrators delegate the performance of their duties and when judges disqualify themselves. Government operations can accommodate the conscience of individual officials, but neither the government nor its citizens should tolerate veto of a law (either its text or its operation) by officials not formally authorized to do so.

After I wrote those words to share here, I was pleased to read a similar position being advocated by Judge William H. Pryor Jr. of the United States Court of Appeals for the 11th Circuit. In a notable article in the *Yale Law and Policy Review* nine years ago, he wrote:

*[T]here is a limit to the relevance of religion in the performance of my judicial duty. That limit is defined by the very nature of my judicial authority. Properly understood, the exercise of my authority as a federal judge is governed by the law alone. . . .*

*As a judge, I am not given the authority to use a personal moral perspective to update or alter the text of our Constitution and laws. The business of using moral judgment to change the law is reserved to the political branches, which is why the officers of those branches are regularly elected by the people. . . .*

*. . . For centuries, members of Congress have supported a variety of new laws on [moral bases, informed by religion], whether to abolish slavery, withdraw troops from foreign wars, abolish child labor, guarantee civil rights, provide assistance to the poor and sick, protect marriage, or prohibit the sale of intoxicating liquors. The changing of laws enacted by political authorities is*

*not a judge's task; the duty of a judge is the application of those laws in controversies within the jurisdiction of the courts.*<sup>13</sup>

Here I wish to record my agreement with former appellate justice Father Rodney Davis's wise observation that we should "forthrightly face up to how [religious judges'] deeply held religious perspectives impact their decision-making."<sup>14</sup> Father Davis observes persuasively that in "discretionary decision-making," like sentencing and custody arrangements, "judges bring their life experiences to the process and with it the perspectives, religious and otherwise, that are part of that experience."<sup>15</sup> He reminds us of "the inescapable fact that a judge's religious perspective influences how he or she sizes up and measures the complicated conduct and motivations presented and how, if given some level of discretion, he or she reacts to them."<sup>16</sup>

How can it be otherwise? Surely a constitution that grants unique guarantees to the "free exercise" of religion cannot deny religious judges the application of their religious experiences while inevitably granting other judges the application of their secular experiences.

Of course it is different, as Father Rodney Davis observes, when a judge is required to "enforce a rule or standard or apply the analytical skill set needed to find and follow an analogous case."<sup>17</sup> Thus, in their role to interpret or apply legal rules, judges must apply the same standards of decision, whether believers or not.



**B** I have been speaking to those for whom religious faith—to one degree or another—is the key to their human dignity. In recent years our society has increased its recognition that many look on race, gender, and sexual orientation as a basis of their human dignity. As these other bases have been accommodated in the law, some have placed freedom from discrimination on these grounds above the constitutional guarantee of free exercise of religion.<sup>18</sup> The collision of these two values is the cause of many of the so-called culture wars. These conflicts inevitably undermine the kinds of mutual support and collaboration of the judiciary and communities of faith that we are seeking in this conference.

**C** Having given some advice to the religious side, I also have some suggestions for those who have other keys to or nonreligious values for their human dignity.

First, please respect the laws that provide unique protections for believers and religious institutions, and please accept the fact that this grants religion an honorable place in our public life. Most notable is the uniquely positioned First Amendment in the Bill of Rights, which singles out "the free exercise of religion" for special protection, along with free speech, free press, and freedom of assembly. This favored constitutional status that a unanimous United States Supreme Court recently described in part as "special solicitude to the rights of religious organizations"<sup>19</sup> should be acknowledged in all controversies over the meaning of "free exercise" and how to balance it against contrary cultural preferences.

Surely this unique constitutional guarantee of the free exercise of religion was intended to grant unique protections to those acting in accordance with religious belief. This was intended in our nation's founding. As Professor Michael McConnell has observed, when the First Amendment was drafted, several formulations were considered, the two final ones being the protection of "rights of conscience" or the "free exercise of religion."<sup>20</sup> The ultimate "choice of the words 'free exercise of religion' in lieu of 'rights of conscience,' is," as Professor McConnell notes, "of utmost importance."<sup>21</sup> First, it made clear that the First Amendment protected more than just belief; it protected action in accordance with belief.<sup>22</sup> Second, while "conscience" emphasizes individual judgment, "religion" also encompasses the . . . institutional aspects of religious belief."<sup>23</sup> Finally, the framers' preference for "free exercise of

## THE FIRST AMENDMENT

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PROTECTED BY THE FIRST AMENDMENT.”**

religion” over “rights of conscience” means that religiously based scruples are given more solicitude than nonreligiously based ones. Professor McConnell wrote about the framers’ thoughtful reasoning:

*The free exercise clause accords a special, protected status to religious conscience not because religious judgments are better, truer, or more likely to be moral than nonreligious judgments, but because the obligations entailed by religion transcend the individual and are outside the individual’s control.*<sup>24</sup>

Treating actions based on religious belief the same as actions based on other systems of belief is, therefore, not enough to satisfy the special place of religion in the United States Constitution. Understanding this reality is important to advancing this conference’s purposes to further mutual understanding, edification, and collaboration.

Second, we must take notice of current theories asserting that religious speech is more dangerous and therefore less deserving of protection than other types of speech. Without detailing the obvious, I merely maintain that the constitutional freedom of religion is intended to be guaranteed—and *is* guaranteed—by not only the First Amendment’s free exercise clause. It is also protected by the companion guarantees of freedom of speech and freedom of assembly. The United States Supreme Court reaffirmed that principle in a near-unanimous


1981 case, declaring that “religious worship and discussion” are “forms of *speech* and *association* protected by the First Amendment.”<sup>25</sup> Thus, these great guarantees are cumulative, strengthening, and building upon one another.

Of course there are extremist and even terrorist groups that attempt to use religious beliefs to justify illegal incitements or violent or destructive actions. Those excesses can and should be rejected by our understanding of the limits on any constitutional right. Similarly, we all understand the common-sense principle that the prospect of abuse of a constitutional right must not be used to veto that right. We resist that tendency for speech and press, and we must also resist it for religion.

For the reasons just stated, the extreme adversaries of churches should refrain from violating or ignoring the fundamental freedoms of speech and assembly that are also enjoyed by religious persons or institutions. Why do I say this? There are strong movements in our country to crowd religious voices, values, and motivations from the public square.<sup>26</sup> One way this is done is to shout down such arguments as irrational or reflective of hatred or bigotry, thus forestalling consideration of the very real secular as well as religious reasons supporting their positions. Even less extreme forms, such as the “principled toleration” argument advocated by some mainstream academics,<sup>27</sup> subvert common understanding and have a chilling effect on speech and public debate on many important issues. This jeopardizes not only the freedom of religious exercise but also the associated freedoms of speech, press, and assembly.

Since such efforts have surfaced on the campuses of various colleges and universities,<sup>28</sup> I cannot refrain from referring to the widely publicized policy on free expression in the academy put forth by my alma mater, the University of Chicago.<sup>29</sup> I am also heartened by President Barack Obama’s recently declared support for free speech on the campus<sup>30</sup> and for broader respect for religion in speech.<sup>31</sup>

Such expressions are encouraging examples of recent reaffirmation of the vitality of freedom of speech on religious subjects and for religious leaders. As my time is up, I will not cite further examples but only affirm the basic principle that religious leaders and religiously motivated persons should have at least the same privileges of speech and participation as any other persons or leaders when they enter the public square to participate in public policy debates.

On this occasion I conclude by urging upon those attending this conference the importance of remembering the vital constitutional rights of free exercise of religion and free speech and assembly when considering controversies involving religion and religious expression. That perspective is vital to advancing our desired collaboration between the judiciary and religious institutions. 

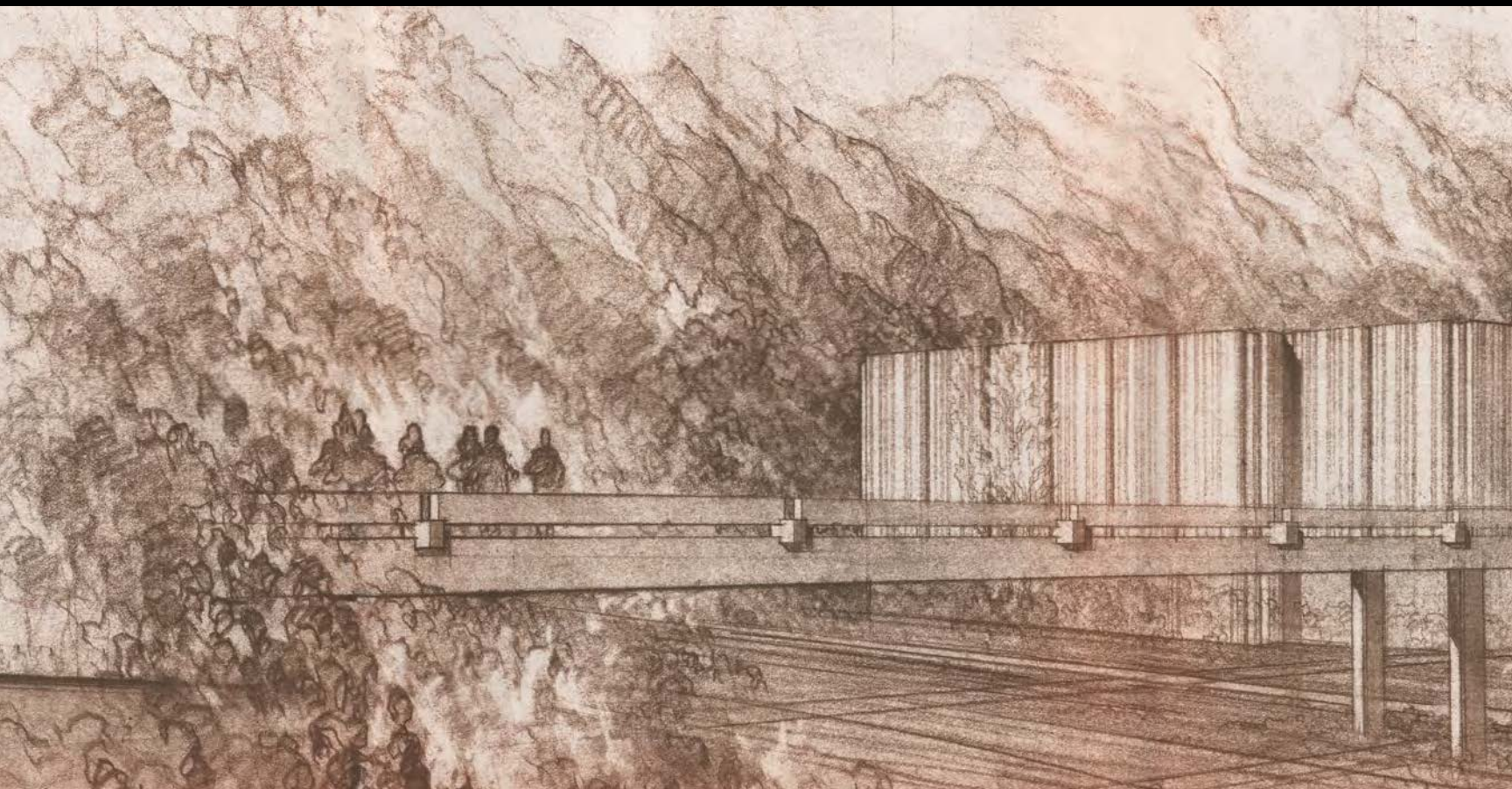




#### NOTES

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- 24 *Id.* at 1497.
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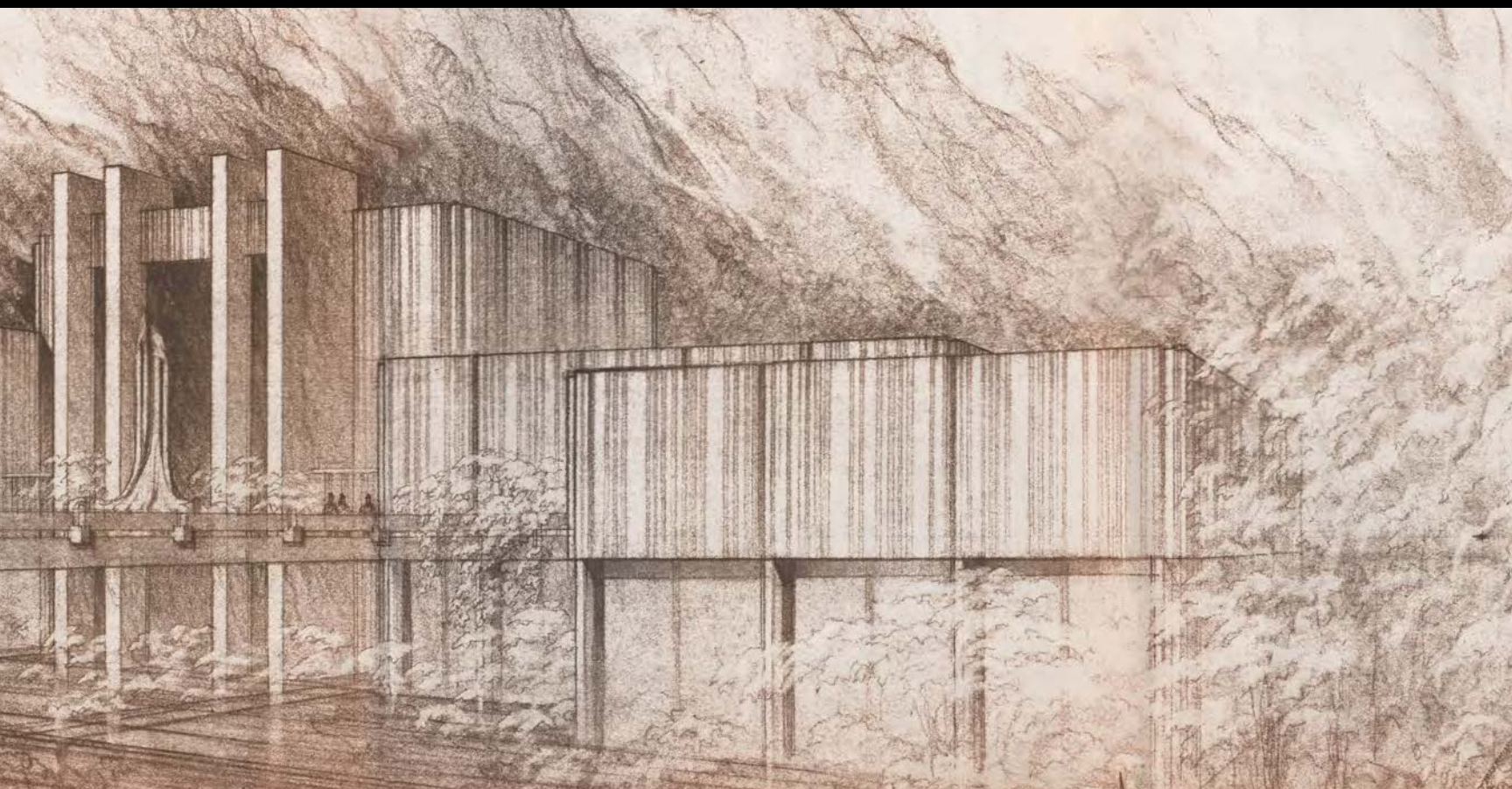
THOUGHTS ON THE



OF J. REUBEN CL



SPECIAL MISSION



ARK LAW SCHOOL

MONTE N. STEWART



**PART ONE** will focus on the founding of the Law School. Perhaps to a greater extent than anyone else in my generation, I was a personal witness to the public events in the founding of the Law School. That is not a boast; there is no particular merit in happening to be a bystander and an observer to events caused by others. And I repeat for clarity that I was a witness to the founding's public events; no one of my generation was involved in the crucial private events leading to the founding—except the personal experiences leading to his or her own decision to become a student here.

**PART TWO** will focus on my continuing relationship with the Law School. Since graduating 39 years ago and all during the intense professional experiences in those years, I have been in a more or less close orbit around the Law School, and it has always been in my thoughts and close to my heart.

**PART THREE** is Elder Dallin H. Oaks's perspective of the founding and mission of the Law School from his talk given at the Founders Day dinner in August 2012 and published in the *Clark Memorandum* in spring 2013.<sup>1</sup> Elder Oaks, one of the four or five most important actors in the founding of the Law School, recounted the founding and its unfolding meaning. Central to his 2012 talk, titled "Unfolding in Time," was a sentence from his August 1973 talk at the ceremony opening the J. Reuben Clark Law School: "The special mission of this law school and its graduates will unfold in time."<sup>2</sup>

I am not here to state or define the Law School's mission or even to suggest what some of its originating purposes might be. I am not enabled by position or authority to do that. I am here to urge the importance of everyone connected to the Law School—especially you students—seriously considering and seriously thinking deeply about "the special mission of this law school and its graduates."

**I have six ideas to share with you.** I like the number six; it precludes folks from saying, "You can count Stewart's ideas on one hand."

① The Lord caused the creation of this law school.

② He has always had serious purposes for this law school.

③ Those serious purposes—this school's special mission—will indeed unfold in time.

④ That special mission belongs to and encompasses in an indivisible way both the Law School and its graduates.

⑤ The Law School will fail to fulfill that special mission—the whole enterprise will be a bust—if its stewards, most importantly you as students now and as graduates hereafter, do not really strive to understand and achieve it.

⑥ The unfolding of the most important and serious purposes comprising that special mission is yet ahead, and your stewardship is crucial to that unfolding.



### The Lord caused the creation of this law school.

I will mention a couple of evidences, the first of which, although consisting of a negative, seems to me to be powerful. It is that most all of the key mortal actors initially opposed the creation of the Law School. Elder Oaks collects the accounts in his 2012 talk. So if mortals did not like the idea of the Law School and did not want it, who did? Elder Oaks recalls, "To me and to my fellow leaders in the university, the decision to establish a law school had been made by men we sustained as prophets, seers, and revelators,"<sup>3</sup> that is, those chosen by the Lord to receive and act on His will and word. Among the affirmative evidences are the miracles that only the Lord could have wrought and which I put into three categories.

The first I call *the miracles of recruitment*. These miracles occurred in private, but their dramatic effects were very public. What occurred in private was that the Spirit of the Lord revealed to one individual after another that the Lord wanted

of America's Great Basin. The dramatic public effect was that these individuals did just that. Perhaps the best-known example is the University of Michigan Law School's Carl Hawkins—a miracle touched on a bit in Elder Oaks's 2012 talk. Numerically, most of these sacred experiences happened to those who became students, that group that Elder Oaks described as

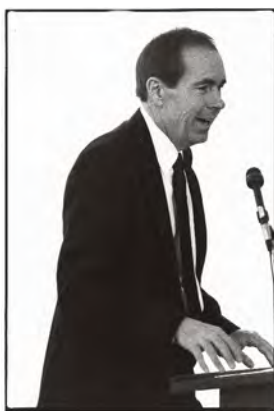
*more than a hundred extraordinarily well-qualified young men and women who could have been admitted to many first-class established law schools [and who] took the breathtaking risk of enrolling at this new one, thereby committing their careers before they began.*<sup>4</sup>

The second category I call *the miracles of performance and achievement*. Some may be disinclined to accept as miracles what I will list here, arguing that if you pull together enough bright, ambitious people and other resources and add a dash of religious zeal, you can naturally expect some pretty impressive performances and achievements. My counter to this naturalistic explanation is an event so beyond the pale of worldly ways as to expose that explanation as limp and even silly and then a suggestion that one look on the other events of performance and achievement with eyes able to discern heavenly as well as worldly doings.

Rex E. Lee was a soul raised up and prepared to be the founding dean of this law school. What he was and the marriage between what he was and this law school's founding amount to a great miracle, although not the beyond-the-pale miracle I am about to describe. It is hard, maybe impossible, for you to understand the awe and admiration and love for Rex that grew in the early students and that they carry inside themselves to this day 40 years later and 20 years after his death. One of his extraordinary but

*This address was a BYU Alumni Achievement Award lecture given during Homecoming at the Law School on September 10, 2015.*

thoroughly necessary traits was his audacity as an advocate. He could persuade an Arab to buy sand and an Eskimo to buy ice, and he directed that audacity at every well-qualified prospective law student who came



Rex E. Lee

on his wide-sweeping radar screen. History confirms that, in his recruiting for the charter class, he promised more than a small number of prospective students that, if he or she came to the new law school, he or she would certainly become the editor in chief of the law review.

Only once did his audacity fail. In September 1972 he met with two prospective students with high credentials and did the full sales pitch, which he pulled off with complete aplomb and mesmerizing effect. But then one of them said with earnest, albeit foolish, enthusiasm: “I have thought it would be neat, a great thing, to get to be a Supreme Court law clerk like you were and like Dallin Oaks was. How about that if I become a student here?” The audacity drained out of Rex like the air out of an untied balloon. He seemed to get smaller physically. He spoke in a different and much meeker voice words to the effect that such an opportunity would not really be in the cards for a student of this new law school. But he regained his verve quickly and went on to spin out for the two other visions and promises bearing at least some faint odor of plausibility. And he never gave up trying to recruit those two, who in the end became members of the charter class.

The point of this part of the story is that students at new law schools do not get to be Supreme Court law clerks. That is not how the world works. It is just not how the world works.

In December 1976 the Chief Justice of the United States took as one of his law clerks the earnest and foolishly enthusiastic guy whose question punctured Rex’s

audacity. One year later Justice Lewis Powell, perhaps the most respected member of the Court at that time, took another graduate of the Law School to be his law clerk. There has been a fairly steady parade of BYU Law School grads to the Supreme Court since.

As a close observer of this beyond-the-worldly-pale event, I reject unequivocally any naturalistic explanation that may be advanced for it. I likewise think little of those kinds of explanations for the other events and experiences that I would put in the category of miracles of performance and achievement: 1) the rapid accreditation of the Law School; 2) the high quality of the *BYU Law Review* from the very beginning, that is, when there were no third-year students on it; 3) Rex’s high-profile jobs at the Department of Justice in the Ford and then Reagan administrations and his rise to the top of the Supreme Court bar; 4) the astoundingly fast speed with which the nation’s top law firms became interested in and embraced the graduates of this law school, starting from virtually no interest at all in 1976; 5) the way the Law School was the catalyst for the J. Reuben Clark Law Society, with its phenomenal success and growth, now reaching across the world.

The third category I call *the miracles of timing*. Elder Oaks explains these in his 2012 talk.<sup>5</sup> In the early 1970s the wisdom of man said that a later time would surely be better, would surely make more sense, but the foreknowledge of God said it had to be then. In hindsight, it is clear that the founding had to be then if it was to occur at all.

After witnessing all that I have witnessed, I am fully persuaded that the Lord caused the creation of the Law School and that His hand guided its launch.

## 2 The Lord has always had serious purposes for this law school.

God would not direct a great undertaking with no purpose. The notion of a purposeless God is nonsensical to me. As the scriptures and Church history teach, it is not so unusual that the Lord will direct the doing of something (the what) while delaying the full revelation of His serious purposes in that thing (the why).

## 3

### Those serious purposes—what Elder Oaks called the Law School’s “special mission”—will indeed unfold in time.

This law school began on Monday, August 27, 1973, the first day that a professor began teaching law here to students. The law professor was Rex Lee. I was one of the law students. He taught about the equal protection clause of the Fourteenth Amendment to the federal Constitution.

But before the teaching began, there was a ceremony with prayers and talks. One of the speakers was Marion G. Romney of the First Presidency. Another was then BYU president Dallin H. Oaks, who in his talk spoke the words I quoted earlier: “The special mission of this law school and its graduates will unfold in time.” That sentence was an acknowledgement that the university’s leadership did not then know precisely, and probably even generally, what that special mission was. That sentence is also in prophetic form: it avers a then existing spiritual truth that the Law School had a special mission and that future events will make clear to us what that mission is. I believed that sentence when I heard it then, I have believed it during the many years since, and I believe it now—even though four decades later even Elder Oaks would speak in terms of “[w]hat [we] have . . . done that begins to define that [special] mission.”<sup>6</sup> Notice the important word *begins*.

## 4

### That special mission belongs to and encompasses in an indivisible way both the Law School and its graduates.

Oxford University is comprised of 38 colleges, each with its own way of doing things. For example, All Souls College, one of the oldest and richest, has no undergraduate students and only eight graduate students; my college, St. Anne’s, one of the youngest and poorest, ranks near the top for number of students—about 740—most of them undergraduates. Unlike All Souls College, the reason for St. Anne’s to exist and the measure of its value are very much tied up in its students, past and present and future. That is the way it is with this law school,

# A DEEP SENSE OF MISSION

DEAN JAMES R. RASBAND

It is my pleasure to introduce to you Monte N. Stewart, who is a graduate of our 1976 charter class and who is the Alumni Achievement Award winner for 2015. He is an extraordinary attorney and an extraordinary person, and, in so many ways, he represents exactly who we want our graduates to be.

When this law school began, one of the first tasks of the first dean, Rex E. Lee, was to put together a great faculty and a great student body. This new law school was unaccredited at the beginning, meaning the graduates couldn't sit for a bar exam. Rex was an incredible recruiter, inspiring students to come to a law school that he promised would be accredited and that was going to be held in a small Catholic elementary school on 900 East, with a promise that someday it would have a building too. One of his early successes was recruiting a BYU student by the name of Monte Stewart, who was at the top of his class in the English Department, finishing summa cum laude with his English major. It really would be hard to overstate the risk Monte was taking. He could have gone anywhere in the country, but he chose to come here. And I think he came here because he saw something in the mission of this law school and wanted to be a part of it. That's partly why today, when he speaks about the mission of the Law School, I want to listen. He has a sense of history in our aspirations. He has actually lived that mission. I also want to listen because I know how much he loves this school.

We love that which we sacrifice for, and the truth is that the members of the first class of this law school feel a depth of commitment and affection for this institution because of the sacrifices they made. As dean, I see that manifested in their giving. To give you a sense of that time, when the charter class graduated, there were only six students who had firm job offers; Monte was one of them. Today that class has produced nine judges, three U.S. attorneys, three mayors, the attorney general of American Samoa, and distinguished practitioners all over the country. It really is an extraordinary group.

Monte was a star even among that class. He was number one in the class, he was the editor in chief of the law review, and he went on to clerk for J. Clifford Wallace in the Ninth Circuit and then for Chief Justice Warren Burger on the United States Supreme Court, where he really paved the way for an impressive

run of BYU graduates to clerk at the United States Supreme Court.

Following his clerkship with Chief Justice Burger, Monte headed off to a national law firm, Gibson, Dunn & Crutcher. Three years later he decided to return to his home state of Nevada, where he worked at a couple of firms and then started his own. Then in 1992 he was asked to serve as the United States attorney for the District of Nevada. The following year he was asked by the Church to serve as president of the Georgia Atlanta Mission, and he made that sacrifice. After returning from his mission, rather than going back to a firm, he became the founding director of our Rex E. Lee Advocacy Program. Almost before Monte settled into an academic life, Utah governor Mike Leavitt asked him to take over the state's legal efforts to block the storage of high-level nuclear waste on the Goshute Indian reservation out in Skull Valley. After his time with the Utah Attorney General's office, his heart went back to education, and he headed off for Oxford, where he earned a master of studies degree in legal research. Then, upon his return, he founded the Marriage Law Foundation here in Utah, and for the next four years he litigated constitutional questions in support of traditional marriage in trial and appellate courts and federal and state courts all around the country.

Since 2008 he has been the founding partner of Stewart Taylor & Morris, a firm in Boise, Idaho, where his practice focuses on constitutional law and complex civil litigation in both trial and appellate courts.

Over and over, Monte Stewart has been willing to place duty and ideals ahead of personal gain and comfort, so when he shares his thinking today about the Law School's mission, you'll be hearing from someone who means it—and who has lived it.



*Monte N. Stewart with  
Dean James R. Rasband*



and Elder Oaks's sentence to which I keep returning recognizes as much; it speaks of the "special mission of this law school and its graduates"—language that rather clearly suggests a single and shared mission.

That idea in turn suggests to me stewardship, with each student and each graduate being a steward of the Law School and its destiny and bearing responsibility for the fulfillment of its special purposes. I have always felt strongly about this idea of stewardship relative to the Law School and hence think lowly of those who come here with a strictly "What's in it for me?" mind-set. Those motivated primarily by a desire to find the highest possible *U.S. News & World Report* ranking at the lowest possible tuition run the risk of living life blind to realities and opportunities and values of far greater worth.

5

**The Law School will fail to fulfill its special mission if its stewards do not really strive to understand and achieve it.**

The truth of this sentence seems to me to be both self-evident and important.

Most of the stewards whom I know well are striving to understand and achieve the Law School's special mission. To those whom I do not know well, all I am saying is that if you are not so striving, you should be, and if you are, great and keep it up!

In the spirit of that striving together, I want to say something about this law school vis-à-vis other law schools, and the starting place for that discussion is the concept of excellence. At the founding, there was much attention, concern, and talk—almost obsession—about this place being a first-class law school, meaning a school that lives the highest and best standards and practices of traditional legal education. There was a strong sense that whatever the Law School's special mission might be, the quality of excellence was absolutely necessary to fulfill that mission. I still firmly believe that.

Excellence in legal education and in the legal profession generally is the product of this formula: a high level of candlepower plus a high level of sustained hard work plus genuine commitment to the venerable



*Looking from the northwest corner to the southeast, this photo from August 1973 shows the progress of the new BYU Law School building, constructed in the Wilkinson Center parking lot, where the old Wymount Village stood for years.*

ideals of the profession: service, independence, zeal, competence, and integrity.

I have every reason to believe that you are fine in the categories of candlepower and commitment to professional ideals. At the founding, we students were handed the biography of J. Reuben Clark Jr. It traced President Clark's life through to his mid-30s, when he graduated from Columbia Law School.<sup>7</sup> I read the subsequent volumes when they came out.<sup>8</sup> President Clark worked prodigiously hard all his long life. He lived the formula for excellence in the legal world, including the component reading "a high level of sustained hard work." The other great and notable Mormon lawyers you may admire also lived that same formula. They took to heart the commandment "[s]ix days shalt thou labor."<sup>9</sup>

It is a lawyer's job to know the law. I do not diminish the importance of learning to think like a lawyer or of knowing how to find the law, but do not use attention to those two skill sets as justification for not learning the law. There is no adequate substitute for having that body of knowledge, and there is no getting it without sustained hard work—with now being the best time for you to do that work.

The quest for excellence at the founding understandably and, in my view, rightly led to close attention to and modeling after the nation's best law schools, especially the University of Chicago and the University of

Michigan. That close attention to and modeling after became a strength of this law school. But as Elder Oaks taught in a 1992 BYU talk, it is all too easy for our strengths to become our downfall.<sup>10</sup> How could that be in this instance?

Let me try an extended analogy emerging from my experience in my beloved adopted state of Idaho. Picture two farming operations side by side. The one on the left is older, more established, and more renowned. It is owned and operated by a profit-driven, massive agribusiness corporation and uses all the best and newest technology and science. When you fly over the two operations, even as low as at crop-dusting height, the two look pretty much the same. That is because the one on the right, paying attention to and modeling after the one on the left, also strives to use all the best and newest technology and science.

But there is a profound difference between the two, invisible to the worldly observer. The one on the right is an LDS Church welfare farm, meaning it is part of the Lord's own vital endeavors, with purposes far different than the purposes of the farming operation on the left and with its stewards having motives for their work quite different than the motives of those running the adjoining operation. The world, of course, seeks to measure the "success" of the two farming operations using a specific metric of quality and quantity of output—of dollars

and cents and of worldly reputation—but I am quite sure the Lord is using a different metric for success of the farming operation that is a part of His latter-day work.

What happens to the welfare farm’s strength derived from its close attention to and modeling after the farming operation on the left when any of the following happens: the farming operation on the left starts devoting large acres to hops and barley for the nearby Anheuser-Busch brewery? Or to the even more lucrative crop of tobacco? Or to the extremely more lucrative crop of “medicinal” marijuana, with its wonderful aroma of compassionate humanitarian service and enhanced liberty? To achieve success as measured by worldly metrics or even just to protect their hard-won reputation as smart farming operators, do the welfare farm’s stewards put that farm on the same path?

I promised at the beginning that I would not set forth my views on what the Law School’s special mission might be, but I made no promise that I would not set forth my views on what the Law School’s special mission is not. It is not to be just another law school like those found all across the nation, even those of highest worldly reputation. The idea that the Lord would need or want or direct his servants to create such a school strikes me as supremely absurd. This law school can learn from and improve because of the best and most worthy features of other law schools, but there is surely a definite limit on how much it can rightly become like them, even those, or especially those, of highest renown. To go forward with the imitation game, with whatever motive, seems to me to be a sure way for this school to fail to achieve its special mission. Besides excellence, courageous independence of thought and action is a quality this school must have to truly succeed.

Now, let me make one more observation bearing on understanding and achieving the special mission, an observation that leads to my last point and the end of this talk. I think it would be a bad mistake to try to discern that mission or this school’s progress toward it with only worldly eyes. I think these are things that can be rightly and fully discerned only with spiritual eyes. In other words, what the world may view as a great achievement



may not really be for this school a mission-fulfilling achievement, and what the world may refuse to view as of any great value may be for this school fulfillment of one of its special purposes.

It may be difficult to connect the next sentence with what I have said before and will say after, but I say it anyway: I suggest that while you are here you value and form deep friendships with classmates and their spouses and nurture those friendships in the years to come.

6

**The unfolding of the most important and serious purposes comprising this school’s special mission is yet ahead, and your stewardship is crucial to that unfolding.**

I have no evidences to present in support of the first part of that sentence other than my own personal conviction, but it is a conviction based on numerous observations of the world over four decades, much hard thought, and spiritual experiences.

The second part of that sentence—“your stewardship is crucial to that unfolding”—seems to me to be another self-evident truth. After all, if the Law School’s special mission is to unfold in the coming years, by whom and through whom could that happen if not by and through you and your classmates?

Now, speaking to you as an individual, your stewardship is, I am sure, highly individualized and therefore distinct in important ways, perhaps even unique. Only you can find and fulfill it. But in the hope of being a bit helpful to you in that endeavor, I am going to mention four decisions crucial to my stewardship owed to this school and to Him who caused it to be created.

① In 1973, after being accepted by Harvard and Boalt Hall, I decided to go here and, further, to work and study very hard, to do my part to make this law school excellent, and to put out a high-quality law review.

② In 1981 I decided to leave a very prestigious law firm, Gibson, Dunn & Crutcher, which had just sent its senior partner to Washington, DC, as the attorney general, to go to Las Vegas to join a two-man firm of which the senior partner, my uncle, was under federal indictment<sup>11</sup> and which had no money.

③ In 1992 I decided to leave a lucrative private practice and engage in public-interest legal work.

④ In 2003 I decided to enlist for the duration of the war in that very small army defending against constitutional attacks on the social institution of man-woman marriage—which meant borrowing against my life insurance policy, going to Oxford without my family to study the issue for a year, and then, while engaged in the cause, having no certain income. The duration turned out to be 12 years.

How does one assess these decisions of mine—or the decisions that you have made or will make—relative to the idea of stewardship? Three ways appear to have a claim of validity. One is to measure the extent to which a decision was consistent with or ran counter to the operation of logic, rationality, and “sound thinking.” There is no avoiding the conclusion that all four of my decisions ran quite a bit counter; with each decision, people went out of their way to tell me I was crazy.

A second way is to measure the extent to which a decision subsequently experienced worldly vindication. The United States Supreme Court clerkship was ultimate worldly vindication of my 1973 decision, whereas my 2003 decision scored just the opposite: we lost the war—for now,



anyway—and I have been made to pay a price at the level of my private practice.

The third possible way is to consider the extent to which the Holy Spirit guided, directed, and confirmed a decision and the decision-maker then diligently implemented it.

My generation had a great dean and has done some good in the unfolding of this law school’s special mission. You have a great dean—I repeat that: you have a great dean—and a much bigger role in that great and important unfolding. God bless you in your stewardship. cm

#### NOTES

- 1 Dallin H. Oaks, *Unfolding in Time: The Founding and Mission of J. Reuben Clark Law School*, CLARK MEMORANDUM 14–21 (spring 2013).
- 2 DALLIN H. OAKS, ADDRESSES AT THE CEREMONY OPENING THE J. REUBEN CLARK LAW SCHOOL 4–5 (August 27, 1973); *see supra* note 1, at 18.
- 3 *Supra* note 1, at 17.
- 4 *Id.* at 18.
- 5 *See id.*
- 6 *Id.*
- 7 *See* DAVID H. YARN JR., *YOUNG REUBEN: THE EARLY LIFE OF J. REUBEN CLARK JR.* (1973).
- 8 *See* FRANK W. FOX, *J. REUBEN CLARK: THE PUBLIC YEARS* (Provo, Utah: BYU Press and Deseret Book, 1980); D. MICHAEL QUINN, *J. REUBEN CLARK: THE CHURCH YEARS* (Provo, Utah: BYU Press, 1983).
- 9 Exodus 20:9.
- 10 *See* Dallin H. Oaks, “Our Strengths Can Become Our Downfall,” address given at a Brigham Young University 18-stake fireside in Provo, Utah (June 7, 1992); *see also* Oaks, *Our Strengths Can Become Our Downfall*, *ENSIGN*, October 1994, available at <https://www.lds.org/ensign/1994/10/our-strengths-can-become-our-downfall>.
- 11 Subsequently, all charges were dismissed and he was fully vindicated.

#### ART CREDITS

Pages 20–21: Drawing of J. Reuben Clark Building courtesy of J. Reuben Clark Law School

Page 23: Photo by John Snyder

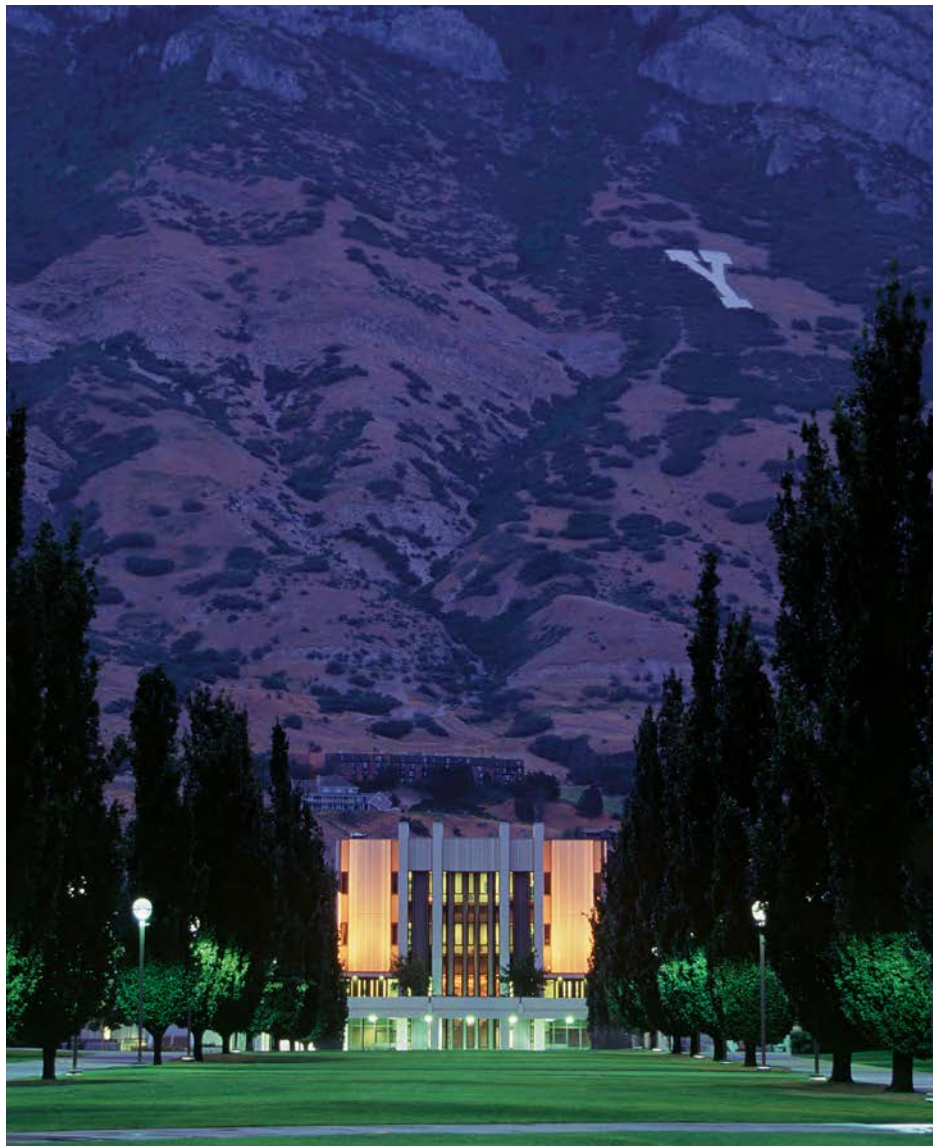
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*The dedication of the BYU Law School, September 5, 1975.*





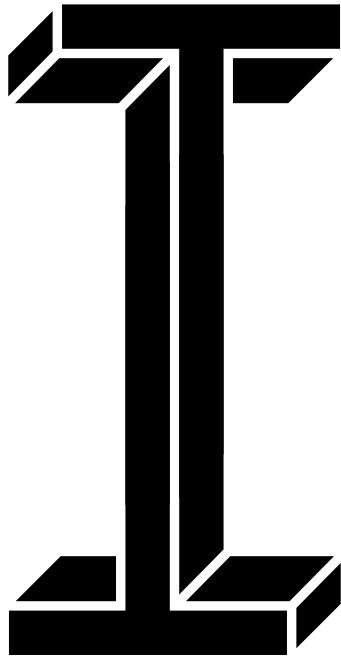
# IN AND OUT OF AFRICA

*The following article  
was the keynote  
address delivered  
at the J. Reuben  
Clark Law Society  
annual conference on  
October 1, 2015.*

STEVEN J. LUND

ILLUSTRATION BY ANDREA VENTURA





am thrilled to be here with so many lawyers once again; it has been probably all the way back to law school since I was in the same room with so many lawyers. I was afraid then too. I thought I might talk today about my career in “lotion law,” but that’s a pretty arcane field.

A few years ago, in my role as an Area Seventy, Elder Russell M. Nelson and I were assigned to reorganize a BYU young single adult stake. Elder Nelson told me he had had an impression about someone he had met, and he asked me to go over and meet Jim Rasband at the Law School and, if I liked him and felt so impressed, call him to be the stake president. What was there not to like? So Dean Rasband and I have been able to work closely together for several years in a young single adult coordinating council. His contributions to this community extend first to the law school but far beyond as well.

I am excited to be here with some of my law school compatriots. Although I don’t know very many of the rest of you personally, I think I do know all of you. I know that you have worked harder than most people to try to put yourself in a position to add value to society by going to law school in order to tool yourself up to making unique contribu-

tions to the world. I don’t know if I have met any law graduates who didn’t have a feeling in the back of their minds that some of their legal education was going to have something to do with making the world a better place. So thank you for what you have done, for what you are doing, and for what you will yet do.

Our profession is much maligned. In the 30 years of my business life, I have had plenty of reasons to malign lawyers myself. But it’s worth recalling that Rex E. Lee, our first Law School dean, used to say, with his profound sense of gravitas, that it was patently unfair to throw out the whole barrel because of six or seven hundred thousand bad apples.

So, maligned or not, I am a lawyer—even though I have spent most of my career outside the active practice of law. When I look at the mission statement of the J. Reuben Clark Law Society, it causes me to wonder if those sentiments still pertain to me, a recovering lawyer. The mission statement seems to be asking you and me to believe that Heavenly Father actually cares about what we do for a living—that He actually engages Himself in our everyday lives, including in our professions. Well, I believe that He does.

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#### CALLING UPON THE LORD

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I grew up in California, came to BYU as a freshman, went on a mission to Holland, and then had a very direct impression that rather than returning immediately here to school, I should join the army—an idea that was brand new and quite bewildering to me. But I had been a missionary, and I knew where those feelings came from. So, with a lot of fear and trepidation, and maybe a little resentment, I followed that prompting, joined the army, and found myself at basic training with the wildest, most reprobate group of people I had ever met—and those



were the drill sergeants. Many of my platoon members were there because judges had told them, “Go to the army or go to jail.”

I had had an impression to enlist, but there wasn’t any other light that came with that impression as to why I should spend these three years heading down that path. We would train in the sand dunes of Fort Ord, California, until 10 at night, go to bed, and then, sometime in the middle of the night, be required to get up one at a time for two-hour fireguard shifts to make sure that the building we were in hadn’t burned down.

In the middle of one of those night shifts, while standing under a fire-watch light by myself, I was feeling pretty exhausted and pitiful, trying to figure out how I was going to get through this. I poured out my sad soul to the Lord. And I heard myself utter the sentence “Father, come soldier with me.”

My testimony to you is that He did. I was strengthened. Running through the sand dunes in combat boots carrying weapons and steel helmets became easier. For the next three years things happened to me that have mattered. They matter still. In fact, from the vantage of hindsight, I can see that every valuable thing—every single thing that matters in my life today—flowed out of the decision to be faithful to that impression.

Three years later, after a six-year summer vacation, I came back to BYU as a 24-year-old sophomore to get an undergraduate degree. I thought I might like to be a philosophy professor, and I minored in philosophy, taking classes from Truman G. Madsen. I determined that I was not Truman G. Madsen, and so, of course, I ended up in law school.

During the first year I learned that it would be valuable for me to seek out a clerkship. This was during the Carter years. Not many firms were hiring, but I beat the bushes and got a clerkship in Farmington, New Mexico. I

took my eight-months-pregnant wife, and we loaded our stuff into a U-Haul trailer and moved down there. I had never been in an actual law office before. I didn’t really know what lawyers did, and my year of law school didn’t help that much. It had been intellectually stimulating, but how to make a living at it was a mystery. I thought that I would show up at this law firm and that there would be an orientation or a tutorial—that they would explain to me how this works, what you do.

Instead I walked in and this lawyer handed me a file and said, “I’m glad you’re here. I’m the contract city attorney for a little community here, and we have a defect in our municipal code. We’ve got a criminal case going on, and opposing counsel is using that defect as a defense. If we lose this, we are going to lose a hundred more cases on appeal. The law library is down in the middle of town. Here’s the combination for the cypher lock on the door.”

I headed out with my heart pounding. I found the law library, where I was all by myself, and I looked around at the stacks. It didn’t look anything like the law library at J. Reuben Clark Law School. I sat down and read the file with a growing sense of doom. I had no idea where to start. I had no ideas at all except that I had a pregnant wife, and I wondered how I would explain to her why we would have to go back home on my first day of work. I found myself again kneeling under that barrack’s fire-watch light, pleading for a miracle. And I heard myself say the words “Heavenly Father, today come clerk with me.” I was immediately filled with a warm, affirming Spirit.

I read the file again while walking through the stacks and finally ended up writing a brief. A couple of weeks later, my wife and I were in the downtown area and we ran into the judge of the case. It’s a small town, and as we introduced ourselves, he said, “I know who you are. You are the clerk who wrote that brief.”

I replied, “Yes, I did.”

He turned to my wife and said, “You should be very proud of your husband. We were in a really tight spot. We say that ‘hard cases make bad law’—and this was one of those cases. But he found a way that allowed us to do the right thing.”

This was an obscure little legal case in a most obscure place, but it taught me that Heavenly Father will go to obscure places with us.

A few years later I graduated from law school, and I was working for a little firm in Provo. I had passed the Arizona and Utah bar exams, and I was trying to figure out what to do with my career when one of my clients with a little start-up company approached me. We had become friends counting tithing on Sunday afternoons while serving in a singles ward



bishopric together on campus. He offered me some worthless stock in his little company in exchange for some of my proportionately valued legal advice—I was a pretty new lawyer. Well, I knew a good deal when I saw one, and I incorporated the company and did some regulatory research for them. Soon he offered me a full-time job—not because he needed a full-time lawyer but because he needed help managing the endless issues of the day. I was feeling that my law firm was not going to be a long-term opportunity for me, so I made a leap and became executive vice president and general counsel of a company with six other employees.

As it turned out, a few years later it became something of a rocket ship. We experienced dramatic growth attributable largely to a product we had licensed from an Italian pharmaceutical company—an innovative, cool product that animated our sales force. Our sales went so well that the Italian company started being approached by large, international companies wanting to license its product. We were a little company; they were big companies. The Italian company had promised us exclusivity and was now having second thoughts. A meeting was scheduled in New York City.

I flew back by myself. It was the first time I had ever been outside the airport in New York City. I walked into a large and formidable antique mahogany conference room in the New York Athletic Club, the home of the Heisman Trophy. There was a band of lawyers there: half a dozen from Rome and some more from New York. There, too, was the venerable old chairman and owner of the Italian pharmaceutical company, whom I was meeting for the first time. Everyone was there to make the case that we were in breach of our agreement. They had developed a half-dozen theories and had prepared a document for me to sign, acknowledging that we were in breach and unwinding our deal.

That morning, before leaving my hotel, I felt the weight of the world on my shoulders because by then we had hundreds of employees and tens of thousands of people whose livelihoods depended on the outcome of this ensuing conversation. If we were declared to be in breach, we were going to be sued by all of them, and we would lose the product that was the locomotive of our company. This was for us an existential event.

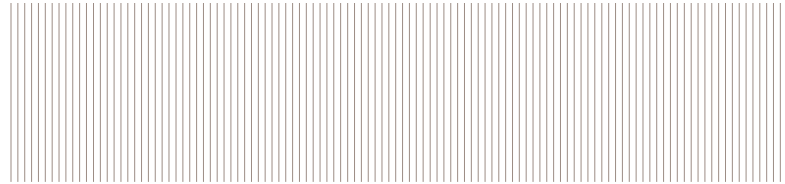
So, kneeling in my hotel room that morning, after a sleepless night, I made this now familiar plea: “Heavenly Father, today come lawyer with me.”

I went into the meeting room, and for an hour they regaled me with all of the reasons they were going to pull that license. But truth was on our side. When they finished and looked to me for a response, I turned to the wizened Italian chairman. He was ancient—he was like my age today. I told him our story and walked him through the issues. I became something of the advocate I had been trained here to be.

When I was finished, his face had softened, and that good man looked around at his colleagues and said, with his Italian accent, “The facts are not with us.” And so it came to pass that now, decades later, we are still selling that product.

I don’t tell you that story to tell you that I was a great lawyer but to say that on that day I was a much better lawyer than I knew how to be. The Lord does engage Himself in our professional lives.

## MORTAL LIFE IS FILLED WITH MIRACLES.



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### BECOMING A FORCE FOR GOOD IN THE WORLD

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The Law Society’s mission statement encourages us to “strive through public service and professional excellence to promote fairness and virtue.” It turns out that I unwittingly went to law school to become a lotion salesman. My career has largely been in a sales and marketing company. Sales may be the hardest way to make a living, next to being a trial lawyer. A salesman has



to start over every morning with the question “Where can I find someone to sell something to today?” In the long run, sales can be very lucrative, but it is usually a challenge to persevere and not quit along the way. One of the secrets of our business has been our commitment to our corporate responsibility initiatives. Our motto asks that we try—together—to be a “force for good in the world through great products, a great business opportunity, and a great culture” that helps those in need. Those good deeds make the sales endeavor more rewarding and more “sticky.” We have found that people will do more for a good cause than they will for a check. Sales people come and go, but they tend to stay loyal to a cause. If we can engage them in something bigger than themselves, if they come to see their professional lives actually working to be a force for good in the world, then they—and we—are more likely to get through the hard days.

We do charitable work in Africa, where there are many, many problems. Discussing our work there, I hear this sentiment all the time: “You know, my wife and I have a lifelong dream to go to Africa. When we can afford to, we are going to go there and try to do something meaningful.” It seems that almost all of us who belong to the family of man have an inward desire to serve, to add value, and to do something outside of our own selfish needs. And so, by making it one of our company’s core missions to be a “force for good in the world,” we have become an aggregator of the goodwill of more than a million salespeople throughout the world. Our people are not waiting for retirement to make a difference; they take pride in the fact that a portion of their professional lives and efforts is making a difference in the here and now. We have been able to do some remarkable things together.

In Malawi we built an agricultural school to help farmers in central Africa feed their families. Their family farms have been broken up so many times among family members through the generations that they are now too small to support families. The children often end up having to leave their farms and go to the city to try to make a living. These broken families are part of the African plight.

We employ teachings from the BYU Ezra Taft Benson Agricultural and Food Institute to teach 21st-century agricultural principles to farmers still living in the Iron Age. We leverage our campus by training government agricultural extension agents, who then take those principles back out into the countryside.

A few weeks ago in Malawi I visited a little tribal village. The headman of the village had become aware of a principle our school teaches that fields should not be burned after harvest, which is their centuries-old practice. By not burning the fields but instead digging the biomass from the last year’s crop back into the ground, the nitrogen load in that organic mass becomes available to the next year’s crop. This improves the soil and reduces the need for prohibitively expensive fertilizer. The headman had learned of this novel practice from us, and while his village was burning its stubble, he distributed his biomass into his fields. That year, at the end of the growth cycle, he harvested 25 bags of grain from a field that the year before had yielded only five bags. The village looked at his example and, without further discussion, did the same thing the next year. So did the neighboring villages. The whole area now follows that example, changing the practices of the whole region and dramatically improving grain yields. This is a tremendous instance of leadership by example. And every railcar of grain produced in those fields is a carload not needing to be donated by charities.

Malawi is a country of 14 million people, and two million of them are AIDS orphans. Every village has dozens or many dozens of children with no mother or father. Villagers get together and find places for the children to sleep, but they struggle to feed their own children, let alone these orphans.

To help, about 10 years ago we built a factory in Malawi in which we manufacture a vitamin-enriched porridge product formulated for malnourished children. We started a program inviting our distributors and employees to buy packets of this



product. We use local produce and local farmers, employ local people, avoid shipping costs by processing and packaging it all locally, and then distribute it through our charitable partners, who hand it out to those in need. When added to boiling water, it becomes food nutritious enough to spare malnourished children the wasting health problems that occur with starvation. There are now more than 100,000 children who are eating this every day; 450 million meals have already been provided to these children and others in developing-world trouble spots. When we think about making a difference in the world by applying our professional competencies in directed ways, we can make the world a better place while we make a living.

Three weeks ago I was in Malawi. Every year I go with a group of our people—salespeople and employees—to make sure that we are keeping our promises. I also serve on the Young Men general board of the Church, and when I travel like this, I meet with local Church leaders to learn how the Young Men program is working. So I met with the mission president there, President Leif J. Erickson. He and his wife are doing some marvelous things. They invited me to go with them to a United Nations refugee camp several hours away, established to help with the humanitarian crisis in the Democratic Republic of the Congo by providing a place for Congolese refugees to go.

In the camp they had discovered a Church member family. In the Congo this family had become aware of the Church, read the Book of Mormon, gained testimonies, and applied for baptism, but they were told that the organized Church wasn't in their region and that they would need to wait. So they held Church meetings in their little house and taught their children the gospel for 11 years until the Church did arrive and they were able to be baptized. At about this time, the parents concluded that where they lived was too dangerous for their children. So they sent their children out of the country to this refugee camp we went to visit.

In the camp we found two sons, a daughter with two young children, and an adult cousin who had fled in fear that they would be conscripted into one of the rogue gangs roaming the countryside.

There was also an older son, whom we did not meet. This 26-year-old had always wanted to serve a mission, but because of the delays, flight, escape, and uncertainty, serving had never been a possibility. When the mission president discovered this family and met with them, this son expressed his hope that he would be able to be a missionary. So President Erickson put together a mission application for him and sent it off.

It came back from Church headquarters saying, essentially, "Unfortunately, probably not." The reasons were that he was 26 years old, which is the upper age limit for missionaries, and, more ominously, that he did not have a passport. The only way to get a passport would be to go back to the Congo, a journey everyone judged to be too far and too dangerous—everyone but him.

He immediately left the camp and somehow made his way across borders and countries, making his way back into the Congo. When we sat with this refugee family in their little red-brick shelter in Malawi, they showed us a letter they had received a few days earlier from their prospective-missionary older brother. He had arrived

home safely and was in the process of applying for his passport while he lay low at his parents' home. He wrote, "Tell the mission president that as soon as I get my passport, I'll be back and be ready to go."

The commitment of this young man is somewhat different than mine. At age 19 I thought that submitting to a blood test was a lot to be asked.

Later that day I met a 30-year-old man in a remote town who had been studying for a master's degree at a divinity school in Malawi. After a comparative religion class one day, he had commented to his professor that he was surprised at how many churches there were. He said something to him like, "Who of all these parties are right? Which church most closely follows the doctrines of the ancient church, the church of the Bible?" (*quoting* Joseph Smith—History 1:10). The professor matter-of-factly answered, "Well, there is such a church, but we don't cover it in this class because it is not yet here in Africa. It's in America. It's called the Mormon church."

Out of curiosity this young man found a library and a computer and started looking up Mormonism. You might think the Internet would have been the end of this story, but instead he ended up Skyping with sister missionaries on Temple Square. They sent him a Book of Mormon, he gained a testimony, and the sisters called the mission president to see if he could be baptized. But again, since he lived 150 kilometers away from the organized Church, he was going to have to wait. The mission president arranged to visit with the young man. He responded that he would do whatever he was asked but sought permission to teach his family and friends and to bring them together to study the gospel.

Some months later I went along with President and Sister Erickson to visit them. The Monday afternoon we arrived there were 60 people at the man's home. They conducted a meeting in which they sang hymns of the Restoration, listened to four speakers, and said opening and closing prayers—all in their local Chewa language. And there was not a member of the Church in the room outside of the missionaries and me. I didn't understand the Chewa talks, except for the occasional words *Thomas S. Monson* and *Joseph Smith*. On the Sunday





before, they had split their informal group into two informal branches, 15 kilometers apart, with more than 100 people showing up for church on Sundays.

The mission president saw what was going on and said, “I’m probably not supposed to have done this, but I let them see book 2 of the Church’s handbook of instructions. Since they are meeting anyway, I thought they should have an idea of what to do. In the handbook they learned about having Young Men and Young Women meetings during the week, so now they meet on Sundays and on Wednesday evenings.”

One Sunday a few months ago, in the middle of the growing season, one of these Church investigators came home to his family and said, “Today at church I learned that God is not pleased with tobacco.” They talked about it and made a decision. The next morning they got up and walked into their half-grown field of tobacco, which is the principle cash crop in Malawi, and hoed it back into the earth. Then they replanted corn. I talked to him after the meeting, a little worried for them in this country, where a failed crop is often fatal.

I asked, “How’s it going?”

He said, “We got a little corn. And, to make up the difference, I started raising bees. I found some beehives.”

I asked, “How’s that going?”

“It’s going really well—but it will be going so much better once I can afford a bee suit.”

Mortal life is filled with miracles. I tell you these stories to illustrate that my life in the law has been an exciting one. It has been a different course than the one I set out on in the formal practice of law, but the principles that I learned in law school have guided much of what I have done and have enhanced and given me standing and understanding in those places I have found myself. It was my legal education—my law degree—that provided me access to where I have gone in my professional life. It has been God’s willingness to come with me that has enabled miracles, to which I have been little more than an innocent bystander.

Thank you for all that you are. God bless you in all that you do. In the name of Jesus Christ, amen. cm

*Steven J. Lund, ’83, serves as executive chair of the board of Nu Skin Enterprises. He is a member of the Utah and Arizona Bar Associations and has served on the board of directors of U.S. Direct Selling Association, as chair of the board of Utah Valley University, and currently as a member of the State Board of Regents. He is a former president of the Georgia Atlanta Mission and an Area Seventy, and he serves on the Young Men general board and is coordinator of the Provo City Center Temple Dedication Committee. He and his wife, Kalleen Kirk, married a week before he started law school at BYU and have four children and seven grandchildren.*



# A COMPASS OF FAITH

THE HONORABLE CLARENCE THOMAS

ASSOCIATE JUSTICE ON THE U.S. SUPREME COURT

I was on the BYU campus today, and it was really kind of hard to leave. I am not just talking about the mountains and the beautiful scenery; I am talking about the way the young people conduct themselves. You go to the classes and the students are respectful. They actually want to learn and want to know. There is a decency and goodness about them. There is faithfulness. And I have been on lots of campuses. This is a real jewel that you have here. It is not just about being smart; there is something else going on that others are missing. That something else is what you have here—character—whether it is a moral code, a sense of something transcendent, a sense of how you treat other people, or a sense of faithfulness to something beyond yourself. It is not just learning math or it is not just learning science. It is learning for a purpose much larger.

Going to Mass every morning orients me during the day about how to do my job the proper way—not to do it with anger, bitterness, or some scheme of changing the world—within my role of judge. I think it is important to have a sense of humility. I think it really is important to have a sense of modesty as to what my role is. I don't have the authority to do things beyond the modest role

that I have. I think that people fool themselves when they think that an important job will suddenly give new wisdom. I think we should stay within our zone, and when I go to Mass, I am encouraged to stay in that zone. I am encouraged to give content to the oath that I took to God to do this job a certain way. Faith is critical. I don't know how you walk in the wilderness without a compass. I don't know how you navigate through life without a compass of faith.

You should be proud of these students, and you should be proud of the Law School's mission. Years ago I talked with Rex E. Lee about this. Don't change the things you are doing. Your students are the fruits of your labors. Just look at them: they are magnificent! I asked Robert Stander, my BYU Law clerk this year—I hope this doesn't embarrass you, Robert—what made a difference in his life. And he said faith. That should be all the reason you need to continue to do what you are doing. See this young man here; see the young kids who have come through your system.

Thank you for an opportunity to be a part of the experience at Brigham Young University and to get to know not only you but the young people you have educated and sent to the Court. You help us make sure we continue to make this country wonderful.



*These excerpts are taken from Justice Thomas's remarks at the BYU Law School Founders Day dinner on October 20, 2015, at the Grand America Hotel in Salt Lake City.*





## BYU MOOT COURT

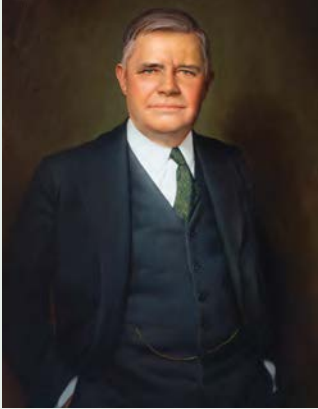
This year's Rex E. Lee Moot Court student finalists had the rare opportunity to argue and then receive feedback from a panel of judges on the DC Circuit, assembled for that purpose in BYU Law's moot court room.

*The judges who attended were, left to right, Patricia A. Millett, Thomas B. Griffith, and David B. Sentelle.*





PORTRAITS OF J. REUBEN CLARK, REX E. LEE, MARION G. ROMNEY, AND HOWARD W. HUNTER WERE UNVEILED AT THE LAW SCHOOL LAST YEAR. THE PAINTINGS WERE DONE BY KEN CORBETT AND WERE MADE POSSIBLE BY A GENEROUS GIFT FROM CAROL SMITH.



## MOST REVEREND WILLIAM EDWARD LORI

*Archbishop of the Baltimore Archdiocese and head of the Ad Hoc Committee for Religious Liberty of the United States Conference of Catholic Bishops*

Most Reverend William Edward Lori was awarded the 2015 International Religious Liberty Award from the J. Reuben Clark Law Society and the International Center for Law and Religion Studies. In his speech at the awards dinner, he quoted Abraham Lincoln, saying, "This nation, under God, [might] have a new birth of freedom." Archbishop Lori explained that this "new birth of freedom" would require us "to serve the common good with bedrock convictions about our shared human dignity, a dignity that is the basis for human solidarity."

He continued: "Indeed, religious liberty is not real if

we are unfree to proclaim and live by views that are culturally unpopular or if it is said that we are free to advocate for such views but we are fined, taxed, jailed, or otherwise marginalized when we try to act upon our convictions.

"Let me thank most sincerely the J. Reuben Clark Law Society, the International Center for Law and Religion Studies, and especially The Church of Jesus Christ of Latter-day Saints for your historic and dauntless defense of religious freedom, for your thoughtful and courageous dialogues with law and culture, and for the partnership and warm friendship that I am

privileged to enjoy, particularly in my role as the bishops' point person on religious liberty issues.

"We do well to remember the words of Joseph Smith: 'I am bold to declare before Heaven that I am just as ready to die in defending the rights of a Presbyterian, a Baptist, or a good man of any other denomination; for the same principle which would trample upon the rights of the Latter-day Saints would trample upon the rights of the Roman Catholics, or of any other denomination who may be unpopular and too weak to defend themselves.'"<sup>1</sup>



<sup>1</sup> Joseph Smith, *History of The Church of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts, 2nd ed. revised (Salt Lake City: The Church of Jesus Christ of Latter-day Saints, 1948 and 1985), 5:498.



# CALENDAR OF EVENTS

BYU LAW SCHOOL, BYU LAW ALUMNI, AND J. REUBEN CLARK LAW SOCIETY

2016

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<b>April 2</b>	<b>General Conference Reception</b>   Joseph Smith Memorial Building, 10th Floor   Salt Lake City   Noon
<b>April 22</b>	<b>BYU Law School Graduation</b>   BYU, de Jong Concert Hall   5:00 p.m.
<b>May 28–31</b>	<b>Washington Weekend</b>   United States Supreme Court Swearing-In
<b>August 15–19</b>	<b>J. Reuben Clark Law Society Education Week Attorney CLE</b>   BYU
<b>August 19</b>	<b>BYU Law Alumni 1L Welcome Breakfast</b>   BYU Law School West Patio
<b>August 25</b>	<b>Founders Day Dinner</b>   Little America Hotel   Salt Lake City   6:00 p.m.
<b>August 26</b>	<b>Dean's Circle Meetings</b>

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## REUNION WEEKEND

<b>September 16</b>	<b>BYU Law Alumni and Friends Ethics CLE</b>   BYU
	<b>BYU Law Alumni Class Reunion Dinners</b>   1976, 1981, 1986, 1991, 1996, 2001, 2006, 2011
<b>September 17</b>	<b>BYU Law Alumni and Friends Tailgate BBQ</b>   BYU Law School West Patio
	<b>BYU vs. UCLA Football Game</b>   BYU

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<b>September 28</b>	<b>J. Reuben Clark Law Society Women in Law Pre-Law Event</b>   BYU
<b>September 29</b>	<b>Student and Attorney Speed Networking</b>   BYU   11:00 a.m.
<b>September 29–30</b>	<b>J. Reuben Clark Law Society Leadership Conference</b>   BYU and Aspen Grove
<b>October 1</b>	<b>General Conference Reception</b>   Joseph Smith Memorial Building, 10th Floor   Salt Lake City   Noon
<b>October 7</b>	<b>BYU Law Alumni and Friends Golf Tournament</b>   Thanksgiving Point   8:00 a.m.
<b>October TBA</b>	<b>BYU Law Alumni Achievement Award Lecture</b>   BYU Law School   11:00 a.m.
<b>October TBA</b>	<b>BYU Law Alumni Association Board Meeting</b>

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2017

<b>January TBA</b>	<b>J. Reuben Clark Law Society Fireside</b>   Conference Center Little Theater   Salt Lake City   6:00 p.m.
<b>February 16–18</b>	<b>J. Reuben Clark Law Society Annual Conference</b>   Location TBA

For more information visit [lawalumni.byu.edu](http://lawalumni.byu.edu) or [jrcls.org](http://jrcls.org).

**Clark Memorandum**

J. Reuben Clark Law School  
Brigham Young University