

Fall 2016

## Clark Memorandum: Fall 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

Fall 2016



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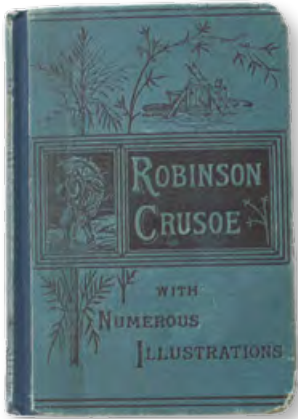
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A bright, curved light streak, possibly representing a comet or a celestial body, arcs across the upper half of the image. The light is a mix of white and pale blue, with a soft, ethereal glow. The background is a deep, dark blue or black, suggesting a night sky or outer space. The light streak starts from the top left and curves towards the bottom right, leaving a faint, wispy trail behind it.

T O S H O O T T H E





M O N

A Conversation with D. Gordon Smith, Eighth Dean of the BYU Law School



*D. Gordon Smith began his term as BYU Law School dean on May 1, 2016, replacing James R. Rasband, who had served as dean since 2009. Smith hails from Wisconsin, is an adult convert to the Church, graduated from BYU with an accounting degree, and attended law school at the University of Chicago. He joined the Law School faculty in 2007 after teaching at several other law schools.*

### **Why did you decide to apply for the deanship?**

Jim Rasband was an amazing dean, and I was blessed to serve as one of his associate deans for five years. During that time, I received a number of calls to apply for deanships at other law schools, but I never applied. In thinking about whether to apply for this deanship, I thought about one of my mentors, who had been a candidate for the deanship at another law school. At the time, I had asked him why he would want to do that, and he said, “Because I want to make a difference.”

While law professors can make a tremendous difference in the classroom and through scholarship, I felt like the time was right for me to make a difference through serving the Law School community in this way. After Jim Rasband’s deanship, BYU Law is in an excellent position to take the next steps toward greatness, and I felt like my experiences and entrepreneurial approach to my work could be helpful to the Law School in taking those next steps.

### **How has the Law School changed during your time here?**

When Jim became the dean and I became one of his associate deans (along with Kif Augustine-Adams), we understood that the Law School was on the cusp of a big transition because of the impending faculty turnover. We knew that a lot of people would be retiring from the faculty within 5 to 10 years, and indeed we have replaced more than two-thirds of our faculty since my arrival at BYU in 2007. This was a very challenging period, but we also recognized an opportunity in this transition, namely, to create a “vibrant intellectual community.” We used those words a lot back then. We wanted BYU Law to become a place where people were animated by a love of scholarship and a love of big ideas.

In pursuit of that vision, we have hired new faculty members who believe that an important part of the job is creating new ideas, and we have tried to mentor those new faculty members in the process of developing and disseminating those ideas. At BYU Law we cannot be content to teach other people’s ideas; it’s important for us to have our own ideas and to contribute to broader conversations. It’s one thing to say, “My job is to read what other people write and present it in a form that my students can find understandable and useful,” and quite another thing to say, “My job is to be a contributor to the great discussions of the day and to help my students engage on a level in which they can have their own ideas.” I think there is an important modeling aspect to being this sort of teacher: your job in life is not just to sift through what other people tell you; your job is to create. And that’s the message we want to send to students—that their job too is to create new ideas.

By the way, this is one of the reasons I am so interested in entrepreneurship, because entrepreneurs are creators. They create something new. When they go to work, something exists that didn’t exist before. I love that!







IT WAS A WAY OF SAYING THAT NOTHING WAS IMPOSSIBLE.

### How did you become so interested in entrepreneurship?

I recently finished reading a book about John F. Kennedy's speech at Rice University in 1962, when he challenged the United States to put a man on the moon before the Soviet Union. I was born in 1962, and I can remember watching Neil Armstrong walk on the moon in 1969. At that young age, I did not appreciate how wild the idea was of a human being walking on the moon, but that event became one of the metaphors of my childhood. People would say, "Well, if we can put a man on the moon..." It was a way of saying that nothing was impossible.

Of course, at the time that John F. Kennedy made that speech, putting a person on the moon was impossible. We didn't have the technology to do it, so a lot of things had to happen from the time that he made that statement to the time that the event actually happened. For me, it was a metaphor that explained how we shouldn't let our present circumstances constrain our aspirations.

### How does this entrepreneurial attitude affect your approach to the deanship?

I think that whenever you get a new job, the tendency is to try to fit a mold and be what someone else wants you to be. For example, when I first became a law professor, I taught from the casebooks that other people recommended and wrote about well-worn topics of corporate governance. Within a few years, however, I was writing my own casebooks, and my scholarship had started to focus on venture capital and entrepreneurship—topics that were hardly discussed in the law reviews in the mid-1990s. In the course of that transition, I discovered that one of my core beliefs is that new ideas are inherently valuable.

I think BYU Law should be known, among other things, as a place of ideas. What I would hope to do as dean is to help people who have innovative ideas execute on those ideas, whether by finding resources for them or providing the space for them or simply offering well-timed encouragement. Sometimes it doesn't take a lot. You can say to somebody, "Hey, that's a great idea! Why don't we do that?"

At this law school, many people—not just faculty—are really creative and have great ideas. I have already noticed that I'm getting a lot more emails saying, "I have this idea that I want to share with you." Maybe people are sending me these emails for the same reason I love giving gifts to my daughter. She gets so excited! I think that when the dean reacts with excitement to new ideas, it has a similar effect on people. It's also important to have someone say, "Yes, we can do something that is different than we have done before. Let's try it!"

### Are you ever afraid of failure?

My family line goes back to the 1830s in Wisconsin. My ancestors on my father's side were dairy farmers. On a recent trip back to see my mother in Wisconsin, my wife, my daughter, and I decided to visit some cheesemakers. One of them was a woman named Marieke Penterman, who is from the Netherlands. She makes an award-winning Gouda. Because I study entrepreneurship, I always ask these cheesemakers how they got started. She told me this story:

"I was in my late 20s, and I'd always had a goal to start a business by the time I was 30. I was sitting in bed thinking about this goal and thinking how I didn't really have any ideas for what I wanted to do for my business. And then my mind started to wander, and I started to think, 'Wow! I really miss the cheese from Holland.' I sat upright in my bed and said to my husband, 'I'm going to make cheese.'"

Her husband was a dairy farmer, so he had the milk, but she had never made cheese before. She enrolled in a course at the local university on how to make cheese, and after she had completed the class, she did apprenticeships both in the United States and in the Netherlands. Four months after making her first batch of Gouda in November 2006, she won a gold medal at the U.S. Championship Cheese Contest, and in 2013 one of her cheeses was named United States Champion.

Marieke is a successful cheesemaker by any measure, but when she started the venture, the outcome was highly uncertain. In those early days, her husband would comment, "I hope your cheese business is a success." She would respond, "If I do this, it is a success. The only way I can fail is to not try."

That is basically my attitude toward failure, and it is one that I have shared with the faculty.



**You mentioned wanting to help BYU Law take the next steps toward greatness. Can you say more about that?**

What do people think of when they hear “BYU Law”? Inevitably these words evoke a connection to The Church of Jesus Christ of Latter-day Saints. Although we embrace that connection—for example, our International Center for Law and Religion Studies does an amazing job promoting religious liberty in the United States and throughout the world—no one at BYU Law believes that this is our sole reason for being. I embrace the idea that the mission of the J. Reuben Clark Law School is still unfolding.

Moreover, I strongly believe that people are led to the Law School at every level. People feel that they are here for a reason and that they are part of something that is bigger than themselves. They want to participate in the adventure of making this law school great.

One of the perks of being dean is that I get to participate vicariously in the successes of our faculty and students. For example, I see Carolina Núñez and Kif Augustine-Adams go down to Dilley, Texas, to help the detainees who are there, and that becomes an expression of the Law School’s identity. I can share in that as a member of the community, even though I was not personally in Dilley. I can applaud it. I can support it. I can be grateful for it. I can be inspired by it. It now affects the way I work and live in Utah. That is how this community works. We have different clusters of people doing different things that are all unified in a vision to make the world a better place. I am grateful to be part of that.

**Tell us about your vision for fundraising.**

We have been blessed by tremendous financial support from the Church and from donors to the Law School. When I speak with prospective law students, it is so wonderful to be able to say, “I want you to be at BYU Law because you are an amazing person with a great mind and incredible life experiences, and we believe that you will enrich the environment of this place and make us proud to have you as an alum.” We are not recruiting students to be at BYU Law so that we can get their tuition money. We want them here because we believe we can help them become great, and we believe they will help us in return. So when I think about fundraising, my first thought is, “How do we bless the lives of the students?”

My second thought is, “How do we increase the influence of the Law School?” At the same time I was being recruited to teach at BYU Law School, the second graduating class was raising money for an endowment to encourage the teaching of law and entrepreneurship. At the time, this was not a major field of study in law schools, but this fund allowed us to launch a startup clinic and various programs at the Law School. In the subsequent nine years, we have hired many faculty members with an interest in this area. I do not believe that all of these events are simply a matter of coincidence.

Now we have other faculty members forming research and teaching clusters around other topics, including the role of law in helping poor and marginalized groups or the development of law and corpus linguistics. We have an incredibly talented and creative faculty, and donations to the Law School can assist them in expanding their influence broadly.







**What unique experiences do you bring to the Law School?**

Well, I am certainly the first dean of the Law School from Wisconsin, and I am in the first generation in my family to attend college. I spent about half of my childhood on a farm and the other half in a really small town right next to our farm.

Another experience that has already forged a number of connections for me is that I majored in accounting at BYU. Shortly after becoming dean of the Law School, I met with Elder Dallin H. Oaks and told him the story of how I decided to major in accounting. When I came to BYU in 1980, I was not a member of the Church. My best friend brought me here, and his older brother had just graduated from the Law School. I had declared myself as a broadcasting major, thinking that I might become a sportscaster, but I was also thinking about law school. When I asked the older brother for advice, he said I could major in anything I wanted, but Dallin Oaks and Rex Lee were both accounting majors at BYU who went on to attend the University of Chicago Law School. So I changed my major to accounting and went to the University of Chicago Law School. Obviously, I was very impressionable.

When I arrived in Chicago, I was convinced that I was going to work in some job involving the Constitution, but I actually became a Delaware corporate lawyer and worked for a large New York-based law firm. Since leaving the practice of law, I have taught at six law schools in the United States as well as in a number of programs abroad. These experiences have given me a very large network of friends in the legal academy and varied perspectives on legal education that I hope will be helpful to BYU Law.

**What is your style of leadership?**

Some people have already noted that I am approaching the deanship with a sense of urgency. With a young faculty, excellent students, a burgeoning network of alumni and friends, and generous financial support, BYU Law is poised to make incredible advances, and I want to seize this opportunity.

My role is to persistently reinforce the notion that BYU Law is a place that revels in new ideas and a place that can and will surprise people in positive ways. This notion needs reinforcement because creating something new can be scary, especially for students or young faculty members. When you are doing something that no one has ever done before and you struggle a bit, you inevitably wonder if there is a reason that no one has ever done it. You realize that it might just be a silly thing to do. But sometimes the reason that no one has done the thing is that no one has figured it out. It is actually pretty hard to know in advance if the thing simply cannot be done or if it just has not been done yet.

I am editing a book right now about entrepreneurial action. In my view, the key to successful entrepreneurship is *action*. You have to *do*. We learn by doing. As Reid Hoffman, the cofounder of LinkedIn, famously said, “If you are not embarrassed by the first version of your product, you’ve launched too late.” That is a distillation of entrepreneurial action. You put something out there, you let people try it, and then you say, “Okay, I knew that wasn’t going to work, but I didn’t know how it wasn’t going to work. And now that I know how that didn’t work, I’m going to make another try and figure out how that doesn’t work. Then I’m going to figure out how this next thing doesn’t work.” Then pretty soon it’s going to work because we will have solved all the important problems. So we will embrace experimentation, and we will recognize that failure only comes in not trying new things.

When I first arrived here, some of my friends in legal academia told me that the BYU Law School will never be this or the BYU Law School will never be that. When I described some of my hopes and dreams for the Law School, they would say, “Good luck. There is no way that will ever happen at BYU.”

Now, less than a decade later, a number of those people have contacted me to remind me of those conversations. They have told me that they didn’t believe me at the time, but now they see it happening.

And I say, “Yes, it is happening, and you should be part of it.”

I hope people who are reading this interview will want to be part of it too. [cm](#)



THE

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# LORD

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IS GOOD TO ME

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*Thoughts on Humility, Gratitude, and Happiness*

Gratitude and humility will give you the clearer vision you need as you search out [life's] opportunities. And the process itself can bring you great happiness if you bring to it a grateful and humble heart.

The Honorable  
Judge Kent A. Jordan

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D

ean Rasband, members of the faculty, distinguished guests, family, friends, and—most important—members of the class of 2016, I am delighted to be here and feel deeply the honor of spending a few minutes speaking with you today.

I am excited for the opportunity because I actually have a little experience doing something like this. A few months after I became a judge, I found a message slip in my office saying that someone from Baylor had called and that they wanted me to be their graduation speaker. I was puzzled since I didn't recall knowing anyone at Baylor, and it is, after all, a major university and I was just a newly minted judge. "But hey," I thought, "why not? I might be a little nervous, but I can do that. How hard could it be?"

I noticed it was a local number, and I figured it must be a local Baylor alum who was setting this up. "Isn't that nice," I said to myself.

So I called the number and discovered that I was being invited to speak at the Baylor Women's Correctional Facility just outside of Wilmington, Delaware, for their high school graduation exercises. It was an institution I had previously been unaware of.

It was a memorable event, not only for the marvelously humbling thing it was to have my pretensions so quickly deflated but also for the great experience it was to meet the five young women who had managed to take high school courses while incarcerated and fulfill the requirements for their graduation. They were women who had seen difficult days, but they were happy and grateful on that day, and so was I.

Humility, gratitude, and happiness just happen to be the things I want to mull over a bit with you today. They are topics that might tend to platitudes, so I will try to avoid that, but I can't make any promises. Some of what I say will surely seem like a celebration of the obvious—like a priceless headline I saw once that said, "Federal Agents Raid Gun Shop, Find Weapons." But stick with me. Some things are worth hearing more than once.

#### THE SLIPPERY VIRTUE OF HUMILITY

*The following address was delivered at the BYU Law School convocation on April 22, 2016.*

Let us start with humility. This priceless virtue is, of course, the slipperiest of all. It has often been said that as soon as you think you have it, you have lost it. You are going into a profession that is not known for its humility, and, having graduated from this wonderful institution, you are going into this profession with a foundation of success that, frankly, may make being humble a little bit harder. I hope you have someone in your life to keep you grounded. You might need somebody to tell you what was once told me—that I should be a more modest fellow because I have so much to be modest about.

I have had plenty of experience with being brought down to earth, and it has often occurred almost immediately after my ego took flight. I have a little sign in my office that says,





*Like Calvin, you will probably find that some of the best reminders about humility come from your close friends and family.*

“Your Excellency of Dignity and Power.” That is what a pro se criminal defendant called me once. I kind of liked it—felt like it fit. Sadly, by the end of the same hearing in which he had awarded me that exalted title, it was clear that I was going to have to send him away for a competency evaluation. I keep that sign around to remind me that the more extravagant the praise, the more likely it is that there may be some problem with the source.

Come-downs are not just for judges though. Life will teach pretty much everyone that it is not the swelling of the head that hurts so much as the sudden shrinkage afterward.

In one of my favorite Calvin and Hobbes comics, Calvin says to Hobbes, “People think it must be fun to be a super genius, but they don’t realize how hard it is to put up with all the idiots in the world.”

And Hobbes responds, “Isn’t your pants zipper supposed to be in the front?”

Like Calvin, you will probably find that some of the best reminders about humility come from your close friends and family.

Anyone with a spouse knows this. When I first became a judge, my wife, Michelle, came downtown to go to some event with me, and as we were walking down the street, a lawyer walked by and said, “Hello, your Honor.”

Michelle stopped dead in her tracks, looked at me, and burst out laughing. “That guy just called you ‘your Honor’! Ha-ha-ha!” It took her a while to recover. That is

the kind of support I have always longed for. If she had been there for the “Your Excellency of Dignity and Power” moment, she would have had to be taken out on a stretcher.

But her gentle skepticism is a great help. After a rough day in court once, I told her, “I think everyone hates me.”

“Don’t be ridiculous,” she answered. “Not everyone has met you yet.”

#### **“THINK THAT YE MAY BE MISTAKEN”**

There are some very practical reasons for you, especially as lawyers, to actively cultivate humility. One is that a humble mind is an open mind, and an open mind is key to doing justice and preserving freedom. And we are in the justice and freedom business. Judge Learned Hand famously said, “The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women.”

In fact, Judge Hand said that the basis of his overall judicial philosophy was captured in Oliver Cromwell’s plea to the Scots just before meeting them in the Battle of Dunbar. Said Cromwell, “I beseech ye in the bowels of Christ, think that ye may be mistaken.” Judge Hand understood the value of a healthy dose of humility, and you should endeavor to do likewise.

This is especially true because humility can open our eyes not only to mistakes but also to possibilities we simply would not otherwise consider. Not many law school graduation audiences would appreciate, as I hope this one might, an excursion into the scriptures, but I think that a great example of humility is the lawyer Zeezrom, who shows up in the early chapters of the book of Alma in the Book of Mormon. Zeezrom is one of my heroes. He doesn’t appear with a white hat, though, as you probably know. Quite the contrary.

When we first meet him, we are told that “Zeezrom was a man who was expert in the devices of the devil, that he might destroy that which was good” (Alma 11:21). And how did he go about destroying good things? By using the skills he had developed as a lawyer.

The lawyers in Nephite society “were hired or appointed by the people to administer the law at their times of trials” and “were learned in all the arts and cunning of the people; and this was to enable them that they might be skillful in their profession” (Alma 10:14-15).

Zeezrom was “one of the most expert among them, having much business to do among the people” (Alma 10:31). He was, in short, a first-rate trial attorney with a good book of business, and he knew how to cross-examine a witness. So when he undertook to cross-examine the newly called missionary Amulek, who was assisting Alma in trying to get the people of Ammonihah to repent, both he and his audience may have felt that this would be an entertaining bit of slicing and dicing.



But Zeezrom was in for a major surprise, indeed a life-changing surprise. His aim was to

*question [Amulek], that by . . . cunning devices [Zeezrom] might catch [him] in [his] words [and] find witness against [him and so] deliver [him] to their judges that [Amulek] might be judged according to the law, and . . . slain or cast into prison, according to the crime which [Zeezrom] could make appear or witness against [him]. [Alma 10:13]*

If we read the 11th chapter of Alma, we see Zeezrom try to hang Amulek on a preposition, using some deliberate verbal misdirection based on Amulek's assertion that the Son of God would not save people *in* their sins. Zeezrom twists that to imply that Amulek had said that the Son of God would not save people *from* the consequences of sin (*see* Alma 11:32–35). Despite that, and though Amulek was new to the ministry, he had the eloquence and insight that comes from the Holy Ghost, and he withstood the cross-examination in a way that caused Zeezrom to realize—maybe for the first time in his life—that perhaps he was mistaken about a great many things.

Once that idea took hold, it seems that a humility came with it that allowed Zeezrom's mind to open up to a whole range of ideas that had never found purchase there before.

*And it came to pass that Zeezrom was astonished at the words which had been spoken [both by Amulek and by Alma]; and he also knew concerning the blindness of the minds, which he had caused among the people by his lying words; and his soul began to be harrowed up under a consciousness of his own guilt. [Alma 14:6]*

With his guilt-ridden but now open mind, Zeezrom had a lot of questions for Alma and Amulek, but this time they were not “dig a pit for thy neighbor” (2 Nephi 28:8) cross-examination-style questions; they were instead the humble questions of someone actually trying to learn, as he “began to inquire of them diligently, that he might know more concerning the kingdom of God” (Alma 12:8).

This is what makes Zeezrom a hero to me: he got humble enough to learn and to change. We read that “Alma baptized Zeezrom unto the Lord; and he began from that time forth to preach unto the people” (Alma 15:12). We don't learn what happened to him professionally, though we know he must have lost his great book of business, because his hometown crowd “cast him out from among them” (Alma 14:7). We also know that he became a great missionary, because when Alma later launched an effort to reintroduce the gospel to another hardened community, one of the few people he selected to take with him was Zeezrom (*see* Alma 31:6). We can imagine that the rhetorical skills and sharp intellect that Zeezrom had honed in his profession were even more powerful when they were turned to worthy purposes and were magnified by the Lord than when they were set on selfish and destructive ends.

Later, when we read that there was a city named Zeezrom (*see* Alma 56:14), I like to think that it was in honor of this powerful advocate and that he had figured out how to be a great lawyer within the bounds of gospel principles, which absolutely can be done. For Zeezrom, as I will bet is true for almost all of us, the great change began with the humility to respectfully consider something new.

#### THE THINGS THAT MATTER MOST

Because humility naturally involves a respectful attitude, it is not incidental that humble people also tend to be more civil and gentle in their interactions with others, which is a very helpful thing in the rough and tumble world of legal practice. As a young man, George Washington had a little book of rules for himself that included this one: “Use no Reproachful Language against any one neither Curse nor Revile.” If you choose to follow young George, you will certainly run across adversaries who will test your resolve in this regard, but remembering your own slip-ups and giving others the benefit of the doubt will help you moderate your responses.



Humility will bless you and others by helping you avoid taking offense. I urge you to take to heart these words of wisdom reportedly from Brigham Young: “He who takes offense when no offense was intended is a fool, and he who takes offense when offense was intended is usually a fool.” Let humility be your safeguard against that pitfall.

Another excellent reason to work on having a humble heart is that it helps keep our priorities straight. I am not going to pretend that figuring out how to balance the demands of work and personal relationships—especially family relationships—is easy, but humility brings a perspective that can help.

Sometimes people will ask me, “What do you think is the most important part of your job?” And in one way the answer to that question is easy: it is my relationships with my law clerks.

Though the court on which I serve gets to address some very significant issues, almost no one is going to remember for long what we decide in any given case, much less how we articulate what we decide. We write on sand, and a few kicks from some other court or simply the breeze of passing time will wipe away the things we have written. But I like to hope that I will have some lasting impression for good on my clerks—some influence that may benefit them as they accomplish the good and important things they surely will do in their lives. And what goes for my clerks is, of course, true to an even higher degree of my hopes for my family. As you already know or will soon discover, “No other success [in life] can compensate for failure in the home” (David O. McKay). Remember that when you are writing on your sand.

In that same vein—and speaking of sand—I love Percy Bysshe Shelley’s poem “Ozymandias.” It’s probably in every English poetry anthology, so you may have had to read it in high school. I would like to remind you of it again. It says:

*I met a traveller from an antique land  
Who said: “Two vast and trunkless legs of stone  
Stand in the desert. Near them, on the sand,  
Half sunk, a shattered visage lies, whose frown  
And wrinkled lip and sneer of cold command  
Tell that its sculptor well those passions read  
Which yet survive, stamped on these lifeless things,  
The hand that mocked them and the heart that fed.  
And on the pedestal these words appear:  
‘My name is Ozymandias, king of kings:  
Look on my works, ye Mighty, and despair!’  
Nothing beside remains. Round the decay  
Of that colossal wreck, boundless and bare,  
The lone and level sands stretch far away.”*

If a pharaoh’s fallen statue makes for a pathetic sight, think how much sorrier it is to get all high and mighty about writing a good brief or bringing in a big fee. It is not that those things are unimportant or that you can’t take real pleasure in your successes, but soon enough the lone and level sands will stretch far away from whatever little monuments we may make for ourselves at work. Humility can be a helpful, steadying influence to regulate our ambitions and direct our energies toward the things that matter most.

#### A WANT OF THANKFULNESS

The last reason I want to mention for why we should work at humility is the one that leads to the topic of gratitude. Humility is an essential ingredient of real gratitude. Pride is an inward focus and tends to get us thinking so much about what we want that we are blinded to the good around us, to the wonderful things right there in our lives.

A judge I met from the South told me a great story once that illustrates this point, and he told it with a Southern accent, which made it twice as entertaining. He said that he bought

# HUMILITY

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his daughter one of those little turtles that you get in pet stores. She just loved it, had a name for it, loved to feed it, and loved to play with it. They got a special plastic bowl for it with a little island it could crawl on with a fake palm tree, and she would get the turtle out and watch it crawl around.

Everything was good for a while, but then one day she came running to her dad, crying that her turtle had died. He went, and sure enough he saw the turtle lying unresponsive on the floor. His heart broke for his little girl.

He told her that they would get another one just like it, but even though she was small, his daughter understood that life is unique and there really wasn't another turtle just like hers.

So he changed tactics and tried to distract her from her grief. He said, "Since your turtle has died, we'll give it a funeral."

And she asked, "What's that?"

He thought for a second and said, "Well, it's sort of a party."

"Like a birthday party?" she asked, brightening up.

"Yes," he said. "Yes, it's like a birthday party."

"Will there be balloons and cake?"

"Oh yes, there will be balloons and cake."

"And ice cream?"

"Certainly."

She was getting pretty excited by this time. "Can we have a pony ride?"

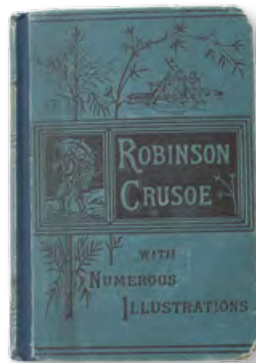
He was so happy that she was happy that he immediately agreed to the pony.

Then something unexpected happened. The turtle moved. They both saw it. It moved again, and then it started to crawl.

And this fellow's little girl looked up at him and said sweetly, "Daddy, let's kill it."

Now that child had a gratitude problem. She had begun to imagine something she wanted, so what she actually had suddenly didn't seem good enough.

This is a problem for many of us. It's an ancient affliction really. My wife once read *Robinson Crusoe* and found a wonderful quote that she posted for our teenagers to see. You will remember that, in the novel, Crusoe is shipwrecked and has to learn to get along on an island without the comforts of home. He is the original Gilligan. At one point he reflects on his daily situation and writes:



*I frequently sat down to meat with thankfulness, and admired the hand of God's providence, which had thus spread my table in the wilderness. I learned to look more upon the bright side of my condition, and less upon the dark side, and to consider what I enjoyed rather than what I wanted; and this gave me sometimes such secret comforts, that I cannot express them; and which I take notice of here, to put those discontented people in mind of it, who cannot enjoy comfortably what God has given them, because they see and covet something that He has not given them. All our discontents about what we want appeared to me to spring from the want of thankfulness for what we have.*

I am perfectly aware that this is a mindset that may not come naturally, especially in a society accustomed to abundance and in a culture that values sarcasm and cynicism, but it is really true that we can decide to be grateful. It is a mental frame of reference that we can, with practice, adopt, and we will be a great deal better off if we do. Gratitude doesn't just help us enjoy what is good in our lives; it actually opens our eyes so that we can see the good things in the first place—like a live turtle.

Does this have anything to do with you and your future? Yes indeed, because without gratitude, one of the things you may well miss are the opportunities that are staring you right in the face. "The race is not [always] to the swift, nor the battle to the strong" (Ecclesiastes 9:11), but, Damon Runyon added, that's the way to bet. And I would also add that sometimes the win goes to the person with the wit to see and be grateful for the chances presented. You have big things to do. Exactly what those things are is for you to discover, but I assure you that the opportunities are there, and God, your Father in Heaven, has already been helping to prepare you for your future roles and responsibilities.

Gratitude and humility will give you the clearer vision you need as you search out those opportunities. And the process itself can bring you great happiness if you bring to it a grateful and humble heart.

#### "THE LORD IS GOOD TO ME"

Let me close with a personal story that comes from the stage of my life that corresponds to where you sit right now. In my final year of law school long, long ago, I set an academic goal for myself. I had worked hard and had had reasonably good success in my legal studies, but I wanted to reach a little higher and gain some extra ground on my grade point average. I thought it would be important for future career prospects. So I set the goal and planned my life around it. It wasn't that I forgot my wonderful wife and our beautiful little daughter nor the impending arrival of my first son. I was just very focused on this one goal.

Throughout the first semester of my third year things were on track, but in the second semester I took a class that involved a joint project, one in which I would be relying in part on the efforts of a fellow student. He was a good guy, but he was not as motivated as I was feeling—at least that was my perception at the time—and the grade that we got was not what I needed for my goal.

I was sure that the unsatisfactory outcome was this other fellow's fault (he may have been thinking the same thing about me), and I became genuinely angry at the disappointing result of the last semester of my law school career. I fell just short of my goal. Looking back on it now, it seems impossibly silly, but at the time I was consumed with a sense of failure and disappointment.

With my negative mindset, I thought that all the big plans I had for professional success were down the tubes. And, in that frame of mind, I let myself get angry with God too. The "How could this happen to me?" thoughts began. I had tried to be faithful in my Church responsibilities, to be a good husband and father, and to work hard and prayerfully for three years, but I had failed to hit the mark.



My graduation ceremony was a few days off, and I decided that I really didn't want to go. I did not feel like celebrating at all. My dear Michelle tried to get me to see things straight, but I was blinded by discouragement. When I was finally jarred out of my self-pity, I think it may have been an answer to her righteous prayers more than my own bitter remonstrances to God.

It came by way of a truly unexpected source: a child's phonograph record that I played for my two-year-old daughter one afternoon to try to entertain her while I sulked.

Somehow or other we had come into possession of a soundtrack recording for an old Disney animated short about Johnny Appleseed. You might have seen it, or your parents might remember it. In it, the Johnny Appleseed character sings a little song:

*The Lord is good to me,  
And so I thank the Lord,  
For giving me the things I need,  
The sun, the rain, and the appleseed.  
Oh, the Lord is good to me.*




Now, no one is going to mistake that for great poetry, and even though I had heard that record over and over and over again (because that's what little kids want when they find something they like), for some reason—and I believe the reason was the Holy Ghost—those words hit me that day like a two-by-four. It was sudden and powerful. It is probably fair to say that “never did any [Disney song] come with more power to the heart of man than this did at this time to mine” (Joseph Smith—History 1:12). I was not looking for or expecting a profound spiritual experience that afternoon—and certainly not one courtesy of a Walt Disney cartoon. But I got one anyway.

I saw, as if for the first time, what had been right before my eyes throughout this minor, manufactured crisis: the Lord really was good to me! I was sealed in marriage to the woman I loved, and she loved me. I had a sweet, healthy daughter. I had, by then, a precious newborn son. I had a loving and supportive extended family. I had good health and had received a good education and had a good job lined up. And, not least, I had been blessed with a testimony of the restored gospel of Jesus Christ. The bounties of my life, which to even a casual observer would have been glaringly obvious all along, were suddenly obvious to me too, and I was flooded with a sense of gratitude and humility—and no small amount of shame for my self-absorbed ill-humor.

I have never forgotten that moment on the eve of my law school graduation. From time to time, when things have not worked out just as I have hoped and planned, that little song has come back to my mind, and the sense of gratitude and humility has returned with it. I have had more than my share of happiness, and I know it.

Here is why I am telling you this: because the Lord has already been good to you too, and I suspect you know it. He will continue to open the right doors, in His own due time, for you and your families, according to His great plan of happiness. Throughout your lives, I hope you will be quicker to see that and appreciate that than I was.

That is my sincere prayer for you as I wish you all success and Godspeed. Congratulations, class of 2016. 

*The Honorable Judge Kent A. Jordan, of the United States Court of Appeals for the Third Circuit, received his undergraduate degree in economics from Brigham Young University and his law degree from Georgetown University Law Center.*



# Think About It

THE VALUE OF LAW SCHOOL

by  
**Ruth  
Lybbert  
Renlund**

PHOTOS BY BRADLEY SLADE







I am particularly happy to talk to you today. I want to tell you a little bit about my life in the law and how I came to the law. I am completely biased about the appropriateness of law for a woman and the value of going to law school. It has had such a positive effect on my life that I encourage anybody who has an interest in it to seriously think about going. So, obviously, if you are here and are thinking about law school, it may well be right for you.

#### BEING FOUND

I want to tell you about how I decided to go to law school and about the effect that decision has had on my life—professionally and as a wife, a mother, and a member of The Church of Jesus Christ of Latter-day Saints.

I am not sure whether I found the law or the law found me. My father was a lawyer. At dinner we all talked about what we had done during our day, and I was the only one out of six children who was really interested in what my dad had done. I was interested as he talked about his trials, about the hearings, and about his interactions with judges and other lawyers—so much so that I remember when I was 10 having my dad invite me to go with him on a deposition. That sounded pretty exciting. I rode with him all the way to Vernal, Utah, for this deposition. I stood at the back of the courtroom while he questioned the witness—I thought quite intelligently—and I was really fascinated.

I attended the University of Utah as a history major, which is the perfect undergraduate major for anyone. As graduation approached, I was considering the law, so of course I asked my dad about it. Surprisingly,

he discouraged me from pursuing law. He did not have a great opinion of what he called “lady lawyers.”

I was also planning a wedding at the time, and my father convinced me that going into teaching would be a good profession—a very traditional female profession. I certified to teach secondary school, and I taught for three years. It was the hardest job

I have ever had. I decided then that I could not be a schoolteacher. After I taught for those three years, my husband and I moved to Baltimore, Maryland, where he did his medical training.

I went to the University of Maryland for law school, in part because I was geographically confined there.

I went as a young mother; we had a three-year-old daughter. I had

experienced some health problems and had been through a bout of cancer. I really had to decide what I was going to do with my life, and I still felt very strongly that I needed to go to law school—I *wanted* to go to law school. And I did. I couldn’t have done it without a very supportive husband who wanted me to be the best person I could be and who wanted me to be happy with what I was doing.

*The following remarks were delivered at the Women in Law Luncheon at BYU on February 25, 2016.*

So I decided to go to law school, but I needed money to go. I asked my dad, that same father who had discouraged me from going, if he could give me a loan so that I could attend. Surprisingly, he encouraged me and said that he would be happy to support me. When I got a real job, I started to pay him back. That repayment became our family’s perpetual education fund. Other family members have used it and then have paid it back too.

My husband and I then moved back to Salt Lake City. My husband had many job offers, and I told him, “Hey, pick a state, any state. But I only want to take the bar exam once.” We moved back to Utah, I took the bar, and I began what would be a very active litigation practice.

During the time I practiced as a trial lawyer, I had, depending on the time, six to seven male partners who were supportive and collaborative. We had great working relationships, and it really didn’t matter that I was the only woman working in the firm.

Our firm worked strictly on contingency fees. If you don’t know what those are yet, you haven’t watched television. That is when you get paid when the case is done. Our law firm had a great emphasis on getting the results and not all the hours it takes



to get those results. So I am one of the very few privileged lawyers, I think, who have never had to do billable hours.

I mention this to you because there are so many different kinds of jobs in the law. You might have an idea of one or two kinds of jobs that lawyers do, but lawyers have broad opportunities to contribute in many different ways. If you are also interested in science, science intersects with the law. Are you interested in medicine? Medicine intersects with the law. Are you interested in engineering or any other field? It intersects with the law.

I really feel like my legal experience helped me become not only a good lawyer but also a good community member, a good mother, a good wife, and a good Church member.

I abruptly left my practice when my husband was called to be a General Authority. I was mighty happy—working away, minding my own business—when this happened. But

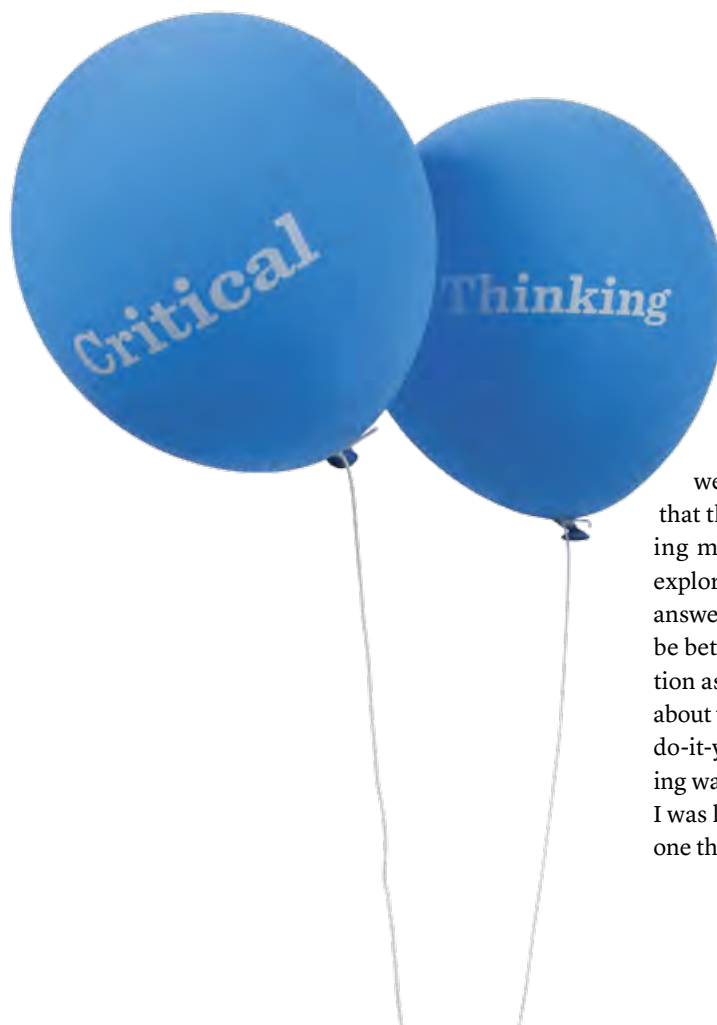
you know, the Church works in an interesting way. When a calling comes, it is truly just that and not something you have earned. It is a calling. And I felt that this was my calling as well. My husband and I have always been partners in whatever we have done, so this was as much a calling for me as it was for him.

His first assignment was in Africa. Living in Africa was a real adventure! We used to pray for just one adventure a day. I really worked to figure out what my role would be and how I could contribute. It was the first time in 23 years that I was not employed. Honestly, I felt like I had entered the witness protection program. Just think about this: People at home didn't really know where I was, people in Africa didn't know that I had a past, and I had a new name, having practiced law under my maiden name, Ruth Lyb-  
bert. Now I was Sister Renlund. We literally lived behind gates and barbed wire, and a security guard patrolled the premises every

hour. I was literally being protected. Most important, I felt like I was in disguise. I was wearing missionary-like clothing and was sporting a very bad South African haircut. I couldn't think of anything that was closer to the witness protection program than what I was experiencing.

This was also a time that I was challenged. I challenged myself to use my legal skills in a nonlegal setting, and it became apparent that these legal skills were really important life skills.

I want to talk about three skills that are easy crossovers between what you learn and practice in the law and what you live every day. These skills are critical thinking, communication, and problem solving. You might think that law school will teach you a certain set of rules that govern courts, contracts, and property. You're right; law school will do that. But the value of a legal education is so much more and is so much broader than just learning legal skills.



I remember well my first Constitutional law class. It was a required course for all first-year students at the University of Maryland. I was terrified that I would be called on and was very bewildered at the end of the class thinking back to what had been discussed. I hadn't taken any notes; all I had written were questions. Gradually, I could see that the questions I had written were making me think about legal problems and explore multiple options as to how I might answer a problem. Why would one answer be better than another? Why was that question asked? What did that question tell me about the subject matter? It felt sort of like a do-it-yourself education. What I was learning was a lot more than Constitutional law; I was learning to think and to analyze why one thing might be better than another.



# A Reputation for Courtesy

BY RONNELL ANDERSEN JONES

It is my pleasure to be here and to introduce today's keynote speaker. I can only assume that our dean of admissions gave me this opportunity because I quite literally leapt in the air, squealed, and clapped my hands like a giddy child when I was told that Sister Renlund had accepted this speaking invitation. We are truly so fortunate to have her, and I am thrilled to tell you a few reasons why.

Ruth Lybbert Renlund has lived an exemplary professional and personal life. She was born in Salt Lake City, one of six children, to Merlin Lybbert, an insurance defense lawyer, and Nola Lybbert, a registered nurse. She married Dale G. Renlund in 1977, and they are the parents of a daughter, Ashley.

Sister Renlund graduated from the University of Utah in 1976 with a bachelor's degree in history. She graduated from the University of Maryland School of Law with her juris doctorate in 1986. Like all other truly successful, well-rounded professionals, Sister Renlund has worked hard to find balance between home and work life. During her time as a law student, her husband was a medical resident with a demanding on-call schedule and was also the bishop of their inner-city ward. She's described this challenge as the equivalent of being a single mother while in law school. She learned to treat her studies as a nine-to-five job, arranging for childcare and making after-school arrangements for her daughter, studying late at night after her daughter was asleep, and trading off duties with her husband when final exams demanded a different schedule. She has joked about the benefit of him taking their young daughter along with him during his home visits as bishop because no one could refuse to let him in with such a gorgeous toddler.

After graduating from law school, Sister Renlund practiced at the Utah attorney general's office for three years and then joined the firm of Dewsnup, King & Olsen, where she practiced plaintiff civil litigation for 20 years. She has been praised by those who know her personally and professionally as a strong and talented litigator who never lost sight of the need for stability in the profession.

This past Sunday at the live broadcast for the North American Northwest and West Areas of the Church, Elder Renlund made his wife's professional reputation for courtesy a centerpiece of a message that he delivered about listening respectfully to opposing viewpoints. He said that during her 23 years in law practice, "she was always working with others who held strongly different opinions than she. I was impressed that two lawyers who were fierce adversaries in the courtroom could sit down calmly together and eat lunch. She said she had learned early in her career to disagree without being disagreeable. She might say to opposing counsel something like, 'I can see we are not going to agree on this issue. I like you. I respect your reasoned opinion. I hope you can offer me the same courtesy.' Most often, this allowed for mutual respect and friendship."

Sister Renlund was serving as the president of her firm at the time of Elder Renlund's call as a General Authority. She also served on the board of directors for the *Deseret News* and the Workers Compensation Fund of Utah, and she served as chair of the Judicial Conduct Commission for the state of Utah. She was the first female president of the Utah Trial Lawyers Association, and she has been a professional and personal role model for many more LDS women than she could possibly know.

It is a privilege for us to hear from her here at this year's Women in Law Luncheon.



The teacher was using the Socratic method, which focuses on asking questions, not giving answers, and was guiding students through elements of reasoning, logic, and discovery. It is immediately an active learning process that engages the student in her own education. I am sure you can see how a crossover works with this kind of thinking since there is no day in which you don't have to make a decision or help somebody else think critically about a particular situation. It is one of life's truly great skills.

When I was a Relief Society president, my experience with critical thinking really made a difference. In one of our ward councils, we talked about a particular single sister with three children who needed some help. There was a lot of discussion that happened—so much so that we needed to have a second meeting on a week night to continue the talk. It was determined that we would all show up, kind of SWAT-team style, on a Saturday morning and fix her problems.

The Primary president took her three children and gave them an entertaining, educational experience. The elders quorum president showed up and fixed the toilet and

the lights. I was there helping her fold clothing and wash dishes. It was apparent that one morning's work was not going to fix the problem.

As we were talking that morning, I simply asked her a series of questions:

"How many times have you been married?"

"Three."

"How many times have you been divorced?"

"Three."

"How many of your husbands fathered a child?"

"Three."

"Do you get any child support?"

"No."

"Are you legally entitled to get child support?"

"Yes."

"Did you get alimony from any of those husbands as you separated and divorced?"

"I was awarded it, but I didn't get it."

"Are you currently receiving any alimony?"

"No."

"Do you see any solutions to help your situation?"

"Yes," she said. "Get those men to pay me what they owe for the children and get my alimony."

I offered to help her do just that. On Monday morning I made a few phone calls and found out that she was also receiving some state funds. You may not know this, but the attorney general's office will pursue men and women who have financial obligations to families so that the state doesn't have to be responsible to pay for it. That was an easy phone call. I simply reported the situation, told them how much they were paying this woman, and told them that there were three people who should be paying. Well, within 60 days this woman was receiving the financial support that she was legally entitled to, and her welfare issues nearly disappeared.

The bishop later told my husband that every bishop in the Church needs a Relief Society president who is a lawyer. That was a situation in which critical thinking—a skill I had developed in law school—became valuable in another area of my life. I did not go to law school to become a better Relief Society president, but for that sister at that time, it was the best way I could help her.

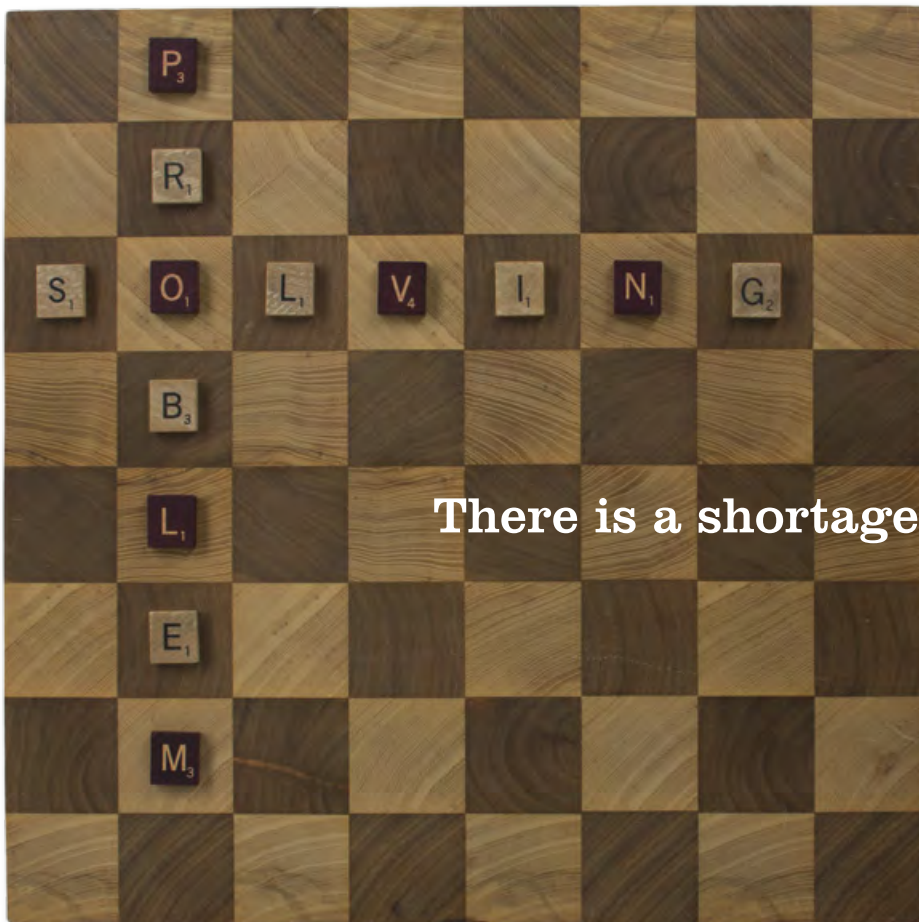
We all know that there are many ways to communicate, but law school focuses on two of the most frequently used forms of communication between people: verbal and written. Law school teaches how to be an effective, persuasive communicator in speaking and writing.

Let's think about verbal communication first. Some people wrongly think that arguing is the same thing as communicating. I have heard people say something like this: "She should go to law school because she argues all the time." A legal education teaches a student how to be a persuasive communicator, not an argumentative one. Although the term *legal argument* is used, it really means to use facts and the law to persuade someone that you're right. Presenting facts, legal precedent, and legislative history in a logical and relevant manner is not only effective communication, it's persuasive.

I find it so interesting that the hours I spent practicing for my oral arguments in moot court continue to be valuable. I learned how to refine an argument, shorten an explanation, and prepare crisp answers to questions. I gained confidence in my ability to express myself while losing some of the nervousness I had while speaking in public, and I learned how to help my family members do the same.







## There is a shortage of problem solvers in our

There is a shortage of problem solvers in our world—not a shortage of problems. We need people who can solve problems in the sandbox as well as on the community council. A legal education brings a perspective to problems and a method for solving them.

The United States has a great heritage of “the common law.” Inherited from England, the common law is a body of solved problems that present a precedent or pattern for solving problems in the future. It is the beginning point of analysis for many legal problems. In addition, we have legislatures that have enacted laws and courts that have interpreted what those laws mean. We call these real-life-situations cases, and they too provide a pattern for solving other problems in the future.

These cases provide a structure for how to look at a problem: What circumstances and mitigating factors need to be considered? What societal concerns come into play? What would be a fair resolution? Weighing all of these factors provides a scaffolding for solving problems today.

At its core, a legal education provides a framework for solving problems. Now please don’t misunderstand what I’m saying. I’m not saying that every problem can be solved by lawyers or that law is the only discipline that will help you learn to solve problems, but it is an excellent model.

Part of being a problem solver is learning how to respond when a problem persists. I learned a lot about this by watching my father. My impressions of being a lawyer were largely shaped by him.

He was from Canada and had never graduated from high school. He came to the United States with the intention of attending BYU, but he couldn’t find a job in Provo, so he settled in Salt Lake City and got admitted, on probation, to the University of Utah. He was put on probation because he had not graduated from high school, and he had not graduated from high school because he had not passed the national departmental French exam. He was from a rural area in Canada and had never seen



# world—not a shortage of problems.

a French-speaking person, let alone known how to pronounce anything in French. So he failed the French exam and didn't get a high school diploma. He didn't get his undergraduate degree either because there were representatives from the law school recruiting bright undergraduate students to come to law school before they even graduated. You can tell that law school admission rules have changed a little bit. He ended up with only one degree, a juris doctorate.

I was interested in how he interacted with people as a lawyer. He was a loving father, a loving husband, a Church member, and a great neighbor, but the thing that I noticed most about him was how he treated people, especially people who didn't agree with him. What was his secret? He had learned to disagree without being disagreeable. My husband talked about that a little at a recent conference because this is a skill that is largely disappearing from our society—to have a discussion in which we don't all agree but still express our opinions and

are able to still be friends. This was probably one of the most important things my father taught me. As I began my legal career, he said, "Look for ways to disagree without being disagreeable."

I have been well served by that fatherly advice. I learned how to view opposing attorneys as friends with differing opinions. I learned to not take an opposing opinion personally. This makes problem solving easier—when emotion and personality fade and reason and clear thinking come to the foreground. This was my experience in the law. Lawyers understand that there will be heated arguments in the courtroom but that everyone can still go out and have lunch afterward.

Clients are suspicious of this: "Are you in cahoots with the other side? Why would you ever sit down with that terrible, nasty person who has an opinion opposing me?"

But that was a great opportunity to explain to my clients, "Look, your case will move more quickly and be resolved more

quickly on more favorable terms if I can be a friend with the opposing attorney. That doesn't mean that I don't represent you or advocate for you fiercely, but in the courtroom it cannot be personal."


Those problem-solving skills are essential to being a good lawyer. But they are also essential to being a good friend, neighbor, wife, Church member, and community member.

## A GREAT CHOICE

Law school is a place for learning critical-thinking, communication, and problem-solving skills. As you learn to think in a particular way, it is always a surprise to discover that others don't see things the same way. Of course there are other ways you can learn to problem solve, communicate, and think, but if you are looking for an education that will broaden your mind, increase your life options, and increase your abilities to improve society, the law is a great choice.

I have talked a lot about myself here, but I would like to now encourage you to think about yourself for a minute. What draws you to the law? What do you think a legal education can do for you? How do you think it will prepare you to be a better person? What might be holding you back?

I would like to tell you that I don't think that there has ever been a better time for a woman to be in the law. Things have changed a great deal since I started. Women are very well accepted in the law now. Legal jobs have become more flexible as the complexity of the world has increased, and the need for skilled problem solvers has increased with it. I would encourage you to think about how you might be able to contribute. If you are naturally drawn to a legal education, then perhaps, like me, the law has found you. Think about it. Pursue it.

It has been a privilege to speak with you about my experience. 







# A WYOMING GOWNGIRL'S

**PATH TO THE BENCH**

JUDGE M. MARGARET MCKEOWN

NINTH CIRCUIT COURT OF APPEALS / JURIST IN RESIDENCE / J. REUBEN CLARK LAW SCHOOL

ILLUSTRATION BY AGATA NOWICKA



The theme of my talk this morning is that you never know where you are going to end up. I look out at all of you and try to imagine many years ago when I sat in your place. I never imagined that I would end up as a federal court of appeals judge. Most of my classmates probably didn't either. I reflect on how so many things in my career were shaped by serendipity. Of course I had the great fortune of having a few wonderful role models, and I worked hard, but there wasn't a lot of scripting involved because I was clueless about what could lie ahead.

I want to talk today about some of the points in my career that were part of the serendipity of how I ended up on the federal bench.

*The following article is excerpted from an address Judge McKeown delivered at the Law School on February 22, 2016.*

#### **HOT-FUDGE SUNDAES AND THE SENATE**

I grew up in Wyoming and was very active in the Girl Scouts. I had an opportunity one summer to go to Washington, DC, to meet with government officials and learn about what they did.

I was told to write to Wyoming's senators. Senator Clifford P. Hansen wrote me back and invited me to visit him at his office.

When I arrived, the first thing he said to me was, "Would you like to see the Senate dining room?" I was thrilled and impressed. First of all, the silverware was really heavy and it was actually silver, and the room was filled with white tablecloths.

It was about three o'clock in the afternoon; we sat down, and he bought me a hot-fudge sundae. He explained how the laws were made—and I was fascinated. What appealed to me was the intricacy of the process.

I said, "I would love to work here!"

He told me I had to wait until I was in college.

Before graduating from high school, I was accepted at Cornell's medical school. Cornell gave me a scholarship but not a full scholarship.

My father said we couldn't afford the school. To be honest, we were not particularly sophisticated about academic matters, so we never thought to go back and ask for more money. Instead, my father said, "You know, if you go to the University of Wyoming, you can actually make money because you will receive so many scholarships."

On my first day at the University of Wyoming I wrote to Senator Hansen: "I'm in college now. Can I come work for you?"

I didn't hear back right away, but I wrote again and again and was pretty persistent. Finally he responded and offered me an internship. Working there was a wonderful experience because instead of having



a hot-fudge sundae and hearing about the law-making process, I was part of the experience.

It was the 1970s, and there were "boy interns" and "girl interns." The girls were sent downstairs to work on the Robotype machine, a precursor to the word processor. It was a massive typewriter that deafened anyone working on it for too long. We used it to send form letters—for example, writing to the Wyoming newlywed couples who were potential voters. However, I soon realized that the male interns were writing memos while I was typing up bride-and-groom letters.

I finally got up my courage and said to Senator Hansen, "Do you think I could write some of those memos and do some of the research? It seems like only the boys are doing that."

He said, "Really?" It hadn't occurred to him. So he invited me upstairs to write memos. That was the beginning of my seeing law in action.

Senator Hansen hired me all of the summers of my undergraduate years, and during my last year in college I worked as one of his Wyoming representatives. I owe a lot to Senator Hansen. He stuck with me as a mentor for many years. Personal relationships were important to him: he knew people's names, he knew the staff, and he talked to everybody—from the elevator operators to the president and the vice president.

I went to Georgetown University Law Center, funded in large part by my work for the United States Senate. I had the opportunity to work for a trial judge for four months, and I spent much of my time working as a criminal investigator, interviewing witnesses and police officers, serving subpoenas, and going to heroin dens to scout out witnesses. I learned an important lesson in the law: facts matter.



I am a westerner at heart, and though I did interview at some New York law firms, I realized that my nature and my attachment to the land meant that I should go west. I needed water and mountains because I wanted to continue hiking and climbing.

I had offers from California Rural Legal Assistance and Perkins Coie in Seattle. Although I accepted the California offer, my gut told me that I should have made a different decision. I called back Perkins Coie the next day and said, “I hope you haven’t given that offer away, because I would like to come to Seattle.” They were gracious enough not to wonder why they were hiring someone who would turn them down one day and offer to show up the next day. It turned out to be a serendipitous and wonderful choice.

The first day was perhaps not my best day. Keep in mind that I went to law school in the 1970s. I had really long hair and long bangs that went right across my forehead. I looked like Joan Baez in a business suit.

I was standing in the copy room when a partner came by and asked, “Are you the new Xerox operator?”

“No,” I said. “I’m your new associate. But I’d be happy to copy your papers for you.”

There were no women role models, but there were others who guided me. If I were to write a book it would be called *Lean Down and Lift Up*. Lawyers, professors, and judges have an obligation to help new lawyers and others in the community—to lift them up, provide them support, and expand their horizons. I was a beneficiary of that largesse and guidance from many lawyers.

Serendipity struck again when I was a fourth-year associate with the “fourth-year itch.” I loved what I was doing, even though I had gone on a little detour back to Georgetown to interview as a law professor. It was then that I realized that I was a litigator at heart, not a professor. But I was looking for something different.



I remembered the White House fellows from the time I had been with Senator Hansen. It’s a program that brings young leaders to Washington, DC, for one year to work at a high level in the executive branch. I applied and became a fellow in the transition year between President Jimmy Carter and President Ronald Reagan, working in both Democratic and Republican administrations. I was special assistant to Cecil Andrus, President Carter’s Secretary of the Interior, and then I worked as special assistant on domestic policy at the White House.

I had told the law firm that I was going to be applying for the fellowship, and I hoped they would understand that I wasn’t trying to escape the firm but that I was looking for some additional opportunities—especially in public service.

The firm said, “We’re sorry you might be leaving, because we want you to open the Washington, DC, office.” As it turned out, the White House fellow application cycle is about a year, so I went to Washington along with a partner to open the firm’s new office. I call this period of my life the year of a thousand meatballs because of all the receptions and business lunches I attended. Just before I left the White House, I learned that the firm had voted to offer me an early partnership.

That same summer, on a mountain-climbing expedition, a friend introduced me to a Seattle lawyer who was going to climb in Tibet, which was at the top of my list for travel. One of the climbers had dropped out, so he offered the place to me. Again, it was total serendipity. I signed up and sent my climbing credentials, as thin as they were, to China. I was not a beginner, as I had spent many weekends over many years climbing all of the major peaks in Washington and some in Oregon.

There were several professional climbers from Colorado, a doctor, and two lawyers from Seattle who went, along with me. We were the first American team to climb Mount Shishapangma, along with a team that was climbing Mount Everest from the China side. It was the first time since the Revolution that Americans were allowed to climb in China. I was the only female on the expedition.

Arriving in those mountains was amazing. I thought Wyoming looked vast. When you get to what is called “the roof of the world,” you see nothing for miles and miles and miles. We ran into a few yak herders here and there. We traded our chocolate for some of their things and started up the 26,000-plus-foot peak.

To acclimate, we had many ups and downs—up 4,000 feet and then down to sleep at a lower elevation, again and again. On one of these forays, we reached about 22,000 feet. As we came down the mountain, we turned around barely in time to see an avalanche barreling toward us and soon to envelop us. Still roped together, we ran, or at least we thought we were running. It was like navigating in a river of concrete. The climbers below at our camp at 19,000 feet thought we had been killed. Obviously I survived, but that frightening life-and-death experience has never left me.



## A Renaissance Lawyer

DEAN JAMES R. RASBAND

I first met the Honorable M. Margaret McKeown when I was a newly minted lawyer at the Perkins Coie law firm in Seattle. Judge McKeown was already a legend there. She was the first woman partner, she had founded the firm's technology/intellectual property law practice, and she was the firm's lead antitrust and constitutional litigator. She was a superstar and I was a newbie, yet she was always kind and gracious in our interactions, just as she was when I invited her to come as a jurist in residence.

Judge McKeown is originally from Casper, Wyoming. She is in the first generation of her family to attend college and has been a trailblazer and a pioneer throughout her life. After studying Hispanic studies at the University of Madrid, she graduated from the University of Wyoming and then obtained her law degree from the Georgetown University Law Center.

In addition to all of the high-profile clients and cases that she handled at Perkins Coie, she was constantly involved in pro bono litigation, particularly in civil rights litigation. She served as lead counsel in a challenge to admit women to Seattle's Rotary Club, and she filed an amicus brief in the related case before the United States Supreme Court.

Continuing that trailblazer theme, Judge McKeown was not only the first female partner at Perkins Coie but also the first woman on the firm's executive committee and the first female managing director. She was the founder and first copresident of the Washington Women Lawyers association and the first woman to serve as president of the Federal Bar Association of the Western District of Washington. She was even part of the first American ascent of Shishapangma, which is one of the fourteen 8,000-meter peaks in the world. That is about 26,000 feet—more than double the height of Mount Timpanogos. I am in awe.

Judge McKeown has done just about everything one can do in a lawyer's life. She has been a White House fellow, a Japan Society fellow, a special assistant to the Secretary of the Interior, the founder of the ABA's Immigration Justice Project, and now, after her 1998 appointment by President Bill Clinton, a federal judge. She teaches Constitution and Internet law, lectures around the world, and serves as an adjunct professor at Georgetown and at law schools in San Diego, where she lives. Her legendary energy that I first observed 25 years ago at Perkins Coie has not abated one bit.

Judge McKeown is also a longtime member of the national board of the Girl Scouts of the USA, and she was given their Cool Women award. Today I introduce you to one cool woman—an extraordinary lawyer, a distinguished judge, and a path-breaking pioneer. It is a great honor to have her at BYU.



I came back to Perkins Coie in Seattle. Because I had been in DC and had taken several years off, I really didn't have much of a practice remaining. I tried to figure out what would make sense and what would be interesting.

This was at the beginning of the digital revolution. Microsoft had barely started and other startups were taking off. I wondered why intellectual property, generally the province of patent lawyers, should belong to only those lawyers. I started a nascent intellectual property practice, but because we weren't patent lawyers, we combined it with antitrust and competition law.

My big break came when Boeing, one of the firm's major clients, asked another partner and me to head key litigation on the intersection of trade secrets and antitrust. I was involved in a trial that ultimately took two and a half months.

The trial started in May, and I was scheduled to get married in late June. My idea was that I would take a couple of weeks off, my mom would come out, we would have the wedding, and then Peter and I would go on an extended honeymoon.

As we moved closer to the wedding date and the trial still dragged on, I panicked. I was doing a lot of the wedding planning during the recesses and in the early mornings and working on witnesses late at night. I realized that the case was not going to end before the wedding day.

On the day of the rehearsal dinner—the wedding was the next day—the judge said, “This case has gone on way too long, so we're going to meet tomorrow and do the jury instructions, and then we'll come back on Monday.”

“Excuse me, Your Honor,” I said. “I'm getting married tomorrow.”

The judge asked, “Is this your first marriage, Miss McKeown?”

I said, “Yes, it is, Your Honor. My partners and my colleagues would like to come to the wedding.”

The judge replied, “Then we'll resume on Monday morning.”

We did resume on Monday morning, and my husband, who is an academic, waited and waited for the trial to end. He had some interviews that he was going to do in Europe combined with our honeymoon, and he had to leave without me.

Finally the jury was out. I left not knowing the verdict and flew to France to meet my husband. We won that case, and I was notified of the result by telegram in a small French town.

I was so fortunate to be in an emerging area of the law. I had no plans to leave that endeavor.

While I was sitting at dinner with a federal judge one night, he asked, “Are you interested in being a judge on the Ninth Circuit? Your name is in circulation.”

And I replied, “No, I hadn't thought of it. What would I need to do?”

I took a napkin, wrote some notes, and stuck it in my purse. A few weeks later people were still asking if I was interested. I thought about it, but I really loved the practice of law, my partners, my clients, and working with the young lawyers. But when I had appellate cases, what I really loved was the luxury of reading and thinking and writing. You often don't have that luxury in trial law because you are moving all the time.

Before I was nominated, I was sent in a big limousine from the White House to see Senator Orrin Hatch, and I felt like it was the biggest job interview of my life. My husband counseled me, “Why don't you just go in there and be yourself?”

I arrived, I went in, and I talked to him lawyer to lawyer. I could tell Senator Hatch had been a trial lawyer. We had a great conversation.

When we were done, I thanked him and said, “It is Girl Scout cookie week, and because my girls can't sell cookies on federal property, I brought you some cookies.”

The next day Senator Hatch called the White House and said my nomination was good to go.

I never could have engineered the nomination. It was serendipitous in so many respects—coupled with a lot of goodwill and support from so many people along the way. I was confirmed in 1998. I have been on the court for almost 18 years, and I have had more than 75 clerks, which is really one of the most rewarding aspects of my job—along with my colleagues and the cases. The judges in the Ninth Circuit know and care about each other, their families, and their personal lives. We have an incredibly collegial court. We may disagree from time to time, of course, but the dissents are gracious and well taken.

It has been a privilege to serve on the court and an honor to be at BYU with my former colleague Jim Rasband. [cm](#)





## A NEW DIRECTOR FOR THE INTERNATIONAL CENTER FOR LAW AND RELIGION STUDIES

Brett G. Scharffs was appointed director of the International Center for Law and Religion Studies in May 2016. Since it was established on January 1, 2000, the Center has played an internationally significant role in the work of the Law School. The Center's mission is to help secure the blessings of freedom of religion and belief for all people. Aided by hundreds of BYU law students, Center faculty and staff have worked to disseminate knowledge and expertise regarding the interrelationship of law and religion through scholarship, network building, participation in law-reform processes, and organization and sponsorship of hundreds of conferences at BYU and throughout the world.

Scharffs, who is the Francis R. Kirkham Professor of Law at BYU, succeeds W. Cole Durham Jr., who served as director of the Center since its inception. Durham assumed the role of founding director in May.

James R. Rasband, then dean of the Law School, praised Durham for his "visionary leadership of the Center since its founding." He noted that Durham "will continue to play an important role in the Center he has sacrificed so much to build. As a leading figure in the world of law and religion, he will also serve as an ambassador for the Center and its work and for the Law School."



Dean Rasband also expressed his gratitude to Scharffs for his willingness to assume responsibility for the leadership, administration, and programs of the Center. "I am confident the Center will continue to flourish under his leadership," he said. "I have worked closely with Professor Scharffs during his last three years as associate dean of the Law School, and I know him to be a tireless worker with sound judgment and a deep commitment to both the Law School and the Center. His extensive university and law school leadership experience, as well as his distinguished record of scholarship and teaching, have prepared him well for this new role."

Scharffs, who has been an associate director at the Center since 2009, completed a three-year assignment as associate dean on May 1. He

is an internationally recognized scholar and leader in the fields of international and comparative law and religion, human rights, and comparative constitutional law. In his 18-year academic career, Scharffs has written more than 100 articles and book chapters and has made more than 300 scholarly presentations in 30 countries. For the past eight years he has helped organize a certificate training program on religion and the rule of law in China. He also co-organizes similar programs in Vietnam and Myanmar and has been working to develop a master's-level course on shari'a and human rights with two universities in Indonesia.

Scharffs received his BSBA and MA from Georgetown University; his BPhil from Oxford University, where he was a Rhodes scholar; and his JD from Yale Law School, where he was senior editor of the *Yale Law Journal*. He was a law clerk on the DC Circuit Court of Appeals, a legal assistant at the Iran-United States Claims Tribunal in The Hague, and an attorney at Sullivan & Cromwell. Since joining the BYU Law School faculty in 1997, Scharffs has taught U.S., international, and comparative law and religion as well as a variety of other subjects.

D. Gordon Smith, who began his term as dean of the Law School on May 1, said, "Under

Professor Durham's energetic leadership, the Center has become a leader in advancing the understanding of connections between law and religion among academics and policy makers throughout the world. We are confident that Professor Scharffs will continue the Center's ambitious agenda of promoting religious liberty for all people. I look forward to working closely with Professor Scharffs as director of the Center and with Professor Durham in his new role as founding director."

Durham and Scharffs are coauthors of a field-making casebook published by Aspen/Wolters Kluwer—*Law and Religion: National, International, and Comparative Perspectives*—that is used around the world and is scheduled for a second-edition printing later this year. The casebook has been published in English, Chinese, and Vietnamese, and translations are underway into Burmese, Turkish, Indonesian, and Arabic. Durham and Scharffs also regularly coteach a popular course on international and comparative law and religion at Central European University in Budapest, Hungary. Earlier this month Scharffs published *Religion and Law in the USA* with Center colleague Elizabeth A. Clark. This is a new volume in the multivolume *International Encyclopaedia of Laws*.



# OPENED HEARTS IN DILLEY

*Two BYU Law professors use their expertise, language skills, and compassion to help refugees on the southern border of Texas.*

BY JANE WISE

Professional distance is an important quality in an attorney, as clients' pain and problems can lay siege to an unprotected heart. But as BYU Law professors Kif Augustine-Adams and Carolina Núñez volunteered earlier this year to give pro bono legal services to women who have fled Central America to seek asylum in the United States, that distance closed. The refugee women are housed with their children in the South Texas Family Residential Center in Dilley, Texas—the largest immigrant detention center in the United States. Augustine-Adams and Núñez have opened their hearts to this project and led the way for BYU Law students to help.

The professors came with expertise: Augustine-Adams writes and researches on critical race and feminist theory and historic migrations, and Núñez researches and writes about immigration law with a specific emphasis on undocumented immigrants. And both are fluent Spanish speakers. Their work at the center is through the nonprofit organization CARA, which was founded by attorneys and uses all-volunteer attorneys, law students, interpreters, social workers, and researchers to defend detained children and their mothers.

To see their clients, Augustine-Adams and Núñez



*BYU Law professors Kif Augustine-Adams (left) and Carolina Núñez*

had to pass through metal detectors and other entry procedures indistinguishable from those in a regular prison before entering the trailer set aside for client interviews. They worked long, sweltering days at the treeless 50-acre facility, which is built on what once had been fracking fields and is encircled by a high barbed-wire fence with security cameras. While there, the professors were barred from visiting the rest of the facility—barrack-like structures where the women and children live.

Opened in December 2014, the center houses 1,735 people, approximately 1,000 of them children. Only adult women and their children are housed in Dilley; all adult men have been transported to a separate facility.

The isolation of the detention center was what first struck Núñez. "Dilley is a town of about 4,000 people," she says. "The geographic isolation makes it difficult for detainees to access legal services. Prior to the development of the CARA pro bono project, most detainees were sent back to the countries where they have been threatened, as these women and children are ill-equipped to navigate the U.S. immigration system. In contrast, over 95 percent of detainees served by the CARA project are able to leave the facility to a safe place in the United States, where they can continue to pursue their asylum claims."

Forcibly returning these women to their homes would be returning them to a place where they might well be terrorized, raped, or murdered. The home countries of the greatest number of detainees—Honduras, El Salvador, and Guatemala—are not under tyrannical regimes, nor are they in economic crisis; rather, criminal gangs are the problem. It is an act of sheer desperation for a woman to take her children and flee northward.

Núñez and Augustine-Adams spent time working on legal briefs, interviewing clients, and, most important, teaching the women how to present themselves and their stories at the "credible fear" interview, a hearing in which an immigration judge decides if the petitioners have sincere fear of returning to their homelands.

The detention facility was given \$75 million in the first quarter of 2016 by the U.S. government. This windfall is the result of a 2014 immigration policy from the Obama administration trying to prevent illegal immigration across the Mexico–United States border. Asylum must be petitioned for on U.S. soil, so the perilous journey from Central America begins by heading north through Mexico. Some of the refugees present themselves to immigration authorities at the border. Others pay "coyotes" to take them across illegally and are intercepted by border patrols. All are sent to the center. In the last five years, the United States and Mexico have returned 800,000 refugees to Central America, including 40,000 children.

Augustine-Adams immediately opened her heart to the work done at the facility when she met her first clients. "Two 14- or 15-year-old girls came into the trailer with their mothers," she says. "They looked just like my teenage daughter, their long hair wrapped up into buns on the tops of their heads. But they were fleeing violence I wouldn't wish on anyone: fleeing rape by gangs, extortion, the possibility of being captured by gangs for use as sex slaves. Meeting those girls made every minute I spent at the facility vitally important."

BYU Law supports the crucial work that Augustine-Adams and Núñez are engaged in and has created law student externships in Dilley during fall and spring placement breaks beginning in fall 2016.

*For more information about volunteering at the South Texas Family Residential Center, visit [caraprobono.org](http://caraprobono.org).*



# LISTEN TO THE INNER VOICES

**LARRY PRESSLER**—a lawyer, speaker, and writer—recently wrote the book *Senator Pressler: An Independent Mission to Save Our Democracy*. He served two terms in the United States House representing South Dakota from 1975 to 1979, and he was the first Vietnam veteran elected to the United States Senate, serving from 1979 to 2007. He currently serves on the Jericho Project's Veterans Initiative Advisory Council in New York City and recently opened two homeless veterans shelters. Senator Pressler is a graduate of Harvard Law School and was a Rhodes scholar. In April 2015 he became a member of The Church of Jesus Christ of Latter-day Saints. He and his wife have one daughter and four grandchildren. || Senator Pressler spoke at the Law School on March 30, 2016, hosted by the Government and Politics Legal Society. Following are excerpts from a Q&A during his visit.

## What do you see as the future work of attorneys?

You are all going to be lawyers, and I've been trained as a lawyer. It is a great profession because you can use it in so many ways to serve God and your fellow men. Our country and many countries in the world will become military industrial intelligent states in which the government will have more power to collect information and data and more powers over citizenry. Because of nuclear weapons, the smaller nations will be just as powerful as the larger nations. We will have a need for good lawyers who can help preserve the liberties of individuals. That is going to be a big challenge because as we protect ourselves and become more secure, we will probably lose individual liberties. Lawyers have been gifted by God with a unique power in society.

Listen to your inner voices in terms of what to do in the law. You have a much broader obligation to serve God and others by listening to those little voices and figuring out what they

mean. And at the end of the day, every situation is different.

Take what happened in the Enron scandal, for example. McKinsey & Company advised Enron on how and what to present to shareholders using false evaluation methods. McKinsey was never found guilty of anything, but some individuals went to jail, and probably more should have gone. We have to ask, What is the ethical standard of a lawyer who is giving advice to a client? How close to the edge should they advise clients to go? Is the behavior allowed by the law?

You will have to face real time and real issues. About the only way to do that is to pursue a spiritual path and listen to your inner voices. Clients will make the ultimate decision, but they will be clients guided by you.

## How did you learn that your inner voice was so important?

I always had a deep faith in God. As a young lawyer I realized that what I was supposed to do was not something grandiose but a lot of little things that added up



to effective lawyering. You really have to get down and do the nitty-gritty details in this work. This is God's will. If it were my will, I would be doing something on a much grander scale. But God is in the details. Listen to the little voices.

## What was your conversion experience?

When I first started out, I joined the Foreign Service. Then my dad got sick with Alzheimer's, so I resigned and went home to help. Eventually I got into business and ran for public office. That was a gift from God that I didn't really expect, and I'm grateful for that opportunity.

I am a little uncomfortable talking about my conversion experience because I don't consider myself a great example. I was slow in hearing my inner voices. I first read the Book of Mormon in a Marriott Hotel in New York City when I was a young Foreign Service officer. The book was persuasive. Then my first political consultant was Dick Wirthlin, a member of the Church. Other employees I had were Mormons. None of them were pushing me very much, but there were all of these little voices. I kept reviewing things, and I believed.

Harry Reid said to me one day, "I want to introduce you to Clayton Christensen, and you should get baptized." I was thought to be a moderate Republican; Harry Reid was a Democrat. There were a lot of ordinary people who were members who I would encounter, and they would take me to Church, and I would have discussions with them.

I got baptized a year ago, and it was the best decision I have ever made.



**Clark Memorandum**

J. Reuben Clark Law School  
Brigham Young University