

Spring 2018

Clark Memorandum: Spring 2018

J. Reuben Clark Law School

BYU Law School Alumni Association

J. Reuben Clark Law Society

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Recommended Citation

J. Reuben Clark Law School, BYU Law School Alumni Association, and J. Reuben Clark Law Society, "Clark Memorandum: Spring 2018" (2018). *The Clark Memorandum*. 63.

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CLARK MEMORANDUM

J. Reuben Clark

Law School

Brigham Young

University

Spring 2018



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The *Clark Memorandum* is published
by the J. Reuben Clark Law School
at Brigham Young University, the BYU
Law School Alumni Association,
and the J. Reuben Clark Law Society.
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A photograph of a desert landscape. In the foreground, a dark asphalt road with a white line and a dashed orange line on the right side curves from the bottom left towards the right. The middle ground is a sandy, arid hillside covered with sparse, low-lying desert vegetation. In the background, a range of blue-toned mountains stretches across the horizon under a pale sky. The title "The Path of Present" is overlaid in white serif font across the middle of the image.

The Path of Present

PHOTOGRAPH BY DEREK THOMSON

A full-page background image of a desert landscape. In the foreground, a dark asphalt road with a yellow dashed line on the left curves towards the right. The middle ground is a vast, arid plain covered with sparse, low-lying desert vegetation in shades of brown and tan. In the background, a range of rugged mountains is visible under a pale, overcast sky. The overall tone is serene and contemplative.

Intention

BY D. GORDON SMITH

It is customary in the welcoming address of the BYU Law School to talk about what it means to think like a lawyer, but I assume that your first-year professors will introduce you to that skill. Instead, I want to spend the short time we have together talking about a weightier matter: how to think like a lawyer of faith. More specifically, I want to challenge the way you think about the path of your life in the law.

ORANDUM



Paths

The path is a powerful metaphor in our religion and culture. The 23rd Psalm describes the Lord leading David in “paths of righteousness.”¹ In the Sermon on the Mount, Jesus told us that

“narrow is the way, which leadeth unto life, and few there be that find it.”² In the Book of Mormon, Lehi described a dream in which he saw a rod of iron extending along the bank of a river. Beside the iron rod was a “strait and narrow path” that connected a large and spacious field, which represented the world, to the tree of life, the fruit of which represented God’s love.³ And in one of his early revelations, Joseph Smith proclaimed that “God doth not walk in crooked paths.”⁴

These teachings all describe spiritual paths. They admonish us to conduct our lives in righteousness, to be disciplined in adhering to divine instruction, and to seek the ultimate goal of living with God. But they do not answer—at least not directly—what type of law we should practice or whether we should practice law at all, where we should live and work or what issues we should consider in making those choices, and what ethical and social values will become most prominent in our professional identities. The answers to these questions and myriad other questions about family, friends, health, and so on determine the paths of our lives. I want to reflect on our paths and how you might approach your time at the Law School.



I WANT TO
REFLECT ON OUR
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LAW SCHOOL.

Getting Proximate

Some of you think you know why you have enrolled in law school. You have particular ideas about your career—perhaps

even a specific job—in mind, and you are eager to check the boxes, earn the diploma, and move to the next stage of your life. You may be so fixed in your imagined path that you are no longer open to counsel, but I encourage you to consider the possibility that you are here for reasons that have nothing to do with the reasons that motivated you to come here.

A few weeks ago I had the privilege of listening to Bryan Stevenson, the founder and executive director of the Equal Justice Initiative, as he spoke to the Utah Bar Convention. He told a story about an experience from the summer after his first year of law school. This experience is the lead story in his excellent book *Just Mercy*, and I quote it at some length here:

I wasn't prepared to meet a condemned man. In 1983, I was a twenty-three-year-old student at Harvard Law School working in Georgia on an internship, eager and inexperienced and worried that I was in over my head. I had never seen the inside of a maximum-security prison—and had certainly never been to death row. When I learned that I would be visiting this prisoner alone, with no lawyer accompanying me, I tried not to let my panic show.

Georgia's death row is in a prison outside of Jackson, a remote town in a rural part of the state. I drove there by myself, heading south on I-75 from Atlanta, my heart pounding harder the closer I got. I didn't really know anything about capital punishment and hadn't even taken a class in criminal procedure yet. I didn't have a basic grasp of the complex appeals process that shaped death penalty litigation, a process that would in time become as familiar to me as the back of my hand. When I signed up for this internship, I hadn't given much thought to the fact that I would actually be meeting condemned prisoners. To be honest, I didn't even know if I wanted to be a lawyer. As the miles ticked by on those rural roads, the more convinced I became that this man was going to be very disappointed to see me.⁵

Stevenson was visiting a man who had been on death row for more than two years. The man did not have a lawyer, and Stevenson's task was to convey to this man one simple message: you will not be killed in the next year.

The visitation room was twenty feet square with a few stools bolted to the floor. Everything in the room was made of metal and secured. In front of the stools, wire mesh ran from a small ledge up to a ceiling twelve feet high. The room was an empty cage until I walked into it. For family visits, inmates and visitors had to be on opposite sides of the mesh interior wall; they spoke to one another through the wires of the mesh. Legal visits, on the other hand, were "contact visits"—the two of us would be on the same side of the room to permit more privacy. The room was small and, although I knew it couldn't be true, it felt like it was getting smaller by the second. I began worrying again about my lack of preparation. I'd scheduled to meet with the client for one hour, but I wasn't sure how I'd fill even fifteen minutes with what I knew. I sat down on one of the stools and waited. After fifteen minutes of growing anxiety, I finally heard the clanging of chains on the other side of the door.

The man who walked in seemed even more nervous than I was. He glanced at me, his face screwed up in a worried wince, and he quickly averted his gaze when I looked back. He didn't move far from the room's entrance, as if he didn't really want to enter the visitation room. He was a young, neatly groomed African American man with short hair—clean-shaven, medium frame and build—wearing bright, clean prison whites. He looked immediately familiar to me, like everyone I'd grown up with, friends from school, people I played sports or music with, someone I'd talk to on the street about the weather. The guard slowly unchained him, removing his handcuffs and the shackles around his ankles, and then locked eyes with me and told me I had one hour. The officer seemed to sense that both the prisoner and I were nervous and to take some pleasure in our discomfort, grinning at me before turning on his heel and leaving the room. The metal door banged loudly behind him and reverberated through the small space.

The condemned man didn't come any closer, and I didn't know what else to do, so I walked over and offered him my hand. He shook it cautiously. We sat down and he spoke first.

"I'm Henry," he said.

"I'm very sorry" were the first words I blurted out. Despite all my preparations and rehearsed remarks, I couldn't stop myself from apologizing repeatedly.

"I'm really sorry, I'm really sorry, uh, okay, I don't really know, uh, I'm just a law student, I'm not a real lawyer. . . . I'm so sorry I can't tell you very much, but I don't know very much."

The man looked at me worriedly. "Is everything all right with my case?"

"Oh, yes, sir. The lawyers at SPDC sent me down to tell you that they don't have a lawyer yet. . . . I mean, we don't have a lawyer for you yet, but you're not at risk of execution anytime in the next year. . . . We're working on finding you a lawyer, a real lawyer, and we hope the lawyer will be down to see you in the next few months. I'm just a law student. I'm really happy to help, I mean, if there's something I can do."

The man interrupted my chatter by quickly grabbing my hands.

"I'm not going to have an execution date anytime in the next year?"

"No, sir. They said it would be at least a year before you get an execution date." Those words didn't sound very comforting to me. But Henry just squeezed my hands tighter and tighter.

"Thank you, man. I mean, really, thank you! This is great news." His shoulders unhunched, and he looked at me with intense relief in his eyes.

"You are the first person I've met in over two years after coming to death row who is not another death row prisoner or a death row guard. I'm so glad you're here, and I'm so glad to get this news." He exhaled loudly and seemed to relax.

"I've been talking to my wife on the phone, but I haven't wanted her to come and visit me or bring the kids because I was afraid they'd show up and I'd have an execution date. I just don't want them here like that. Now I'm going to tell them they can come and visit. Thank you!" . . .

I finished my internship committed to helping the death row prisoners I had met that month. Proximity to the condemned and incarcerated made the question of each person's humanity more urgent and meaningful, including my own. I went back to law school with an intense desire to understand the laws and doctrines that sanctioned the death penalty and extreme punishments. I piled up courses on constitutional law, litigation, appellate procedure, federal courts, and collateral remedies. I did extra work to broaden my understanding of how constitutional theory shapes criminal procedure. I plunged deeply into the law and the sociology of race, poverty, and power. Law school had seemed abstract and disconnected before, but after meeting the desperate and imprisoned, it all became relevant and critically important.⁶

I do not know anything about Henry's case beyond what I have read to you, but there is one thing that I know about Henry: he is a child of God. Stevenson uses this story to illustrate the principle of "getting proximate." Reflecting on his 30 years of representing the poor, the incarcerated, and the condemned, he wrote:

Proximity has taught me some basic and humbling truths, including this vital lesson: Each of us is more than the worst thing we've ever done. My work with the poor and the incarcerated has persuaded me that the opposite of poverty is not wealth; the opposite of poverty is justice. Finally, I've come to believe that the true measure of our commitment to justice, the character of our society, our commitment to the rule of law, fairness, and equality cannot be measured by how we treat the rich, the powerful, the privileged, and the respected among us. The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned.⁷

Stevenson's advice should resonate in this law school, named for J. Reuben Clark, who spoke poignantly "to them of the last wagon."⁸ As you use your legal training to help those who are vulnerable and less fortunate than you, you will find new purpose in and commitment to the task at hand, and you may, like Bryan Stevenson, discover your life's calling.

*This speech
was given
to BYU
Law School
entering
students on
August 23,
2017.*



Just Begin

In encouraging you to make your life plans contingent, I am giving you advice that directly contradicts most career counselors. In *The 7 Habits of Highly Effective People*, Stephen R.

Covey identified as habit two “Begin with the End in Mind.”⁹ This is probably good advice if you are cooking dinner or traveling to see a total solar eclipse, but I suspect some of you would not be here today if you had followed this advice. While I recognize the value of focused effort, I worry that too many of you will get stuck with a bad plan. Covey was worried about a different problem, the problem of unfulfilled dreams:

So, what do you want to be when you grow up? That question may appear a little trite, but think about it for a moment. Are you—right now—who you want to be, what you dreamed you’d be, doing what you always wanted to do? Be honest. Sometimes people find themselves achieving victories that are empty—successes that have come at the expense of things that were far more valuable to them. If your ladder is not leaning against the right wall, every step you take gets you to the wrong place faster.¹⁰

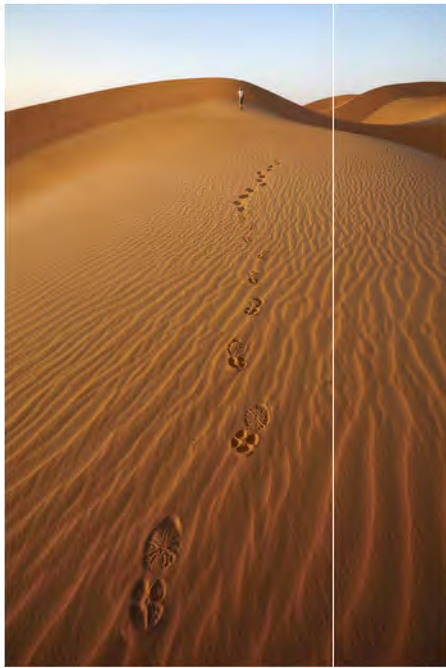
There are at least two major shortcomings with this advice. First, do you want to be bound by the dreams of your child self? I cannot speak for any of you, but the child version of me was a ridiculous person. When I was in third grade, a bunch of my friends became enamored with *The Guinness Book of Records*. What are the most pool balls held in one hand? Where is the smallest chess set? What is the fattest cat of all time? Somehow we got it into our heads that we were going to set the world record for the most people on a single playground swing at one time. Every day we would assemble at recess and try to crack the code of suspended dog piles. Never mind that this record did not exist, nor that we weren’t savvy enough to establish ground rules for setting the record. We were consumed by the idea of having a world record appear in *The Guinness Book of Records*. Let’s just say that it never happened. Frankly, I don’t remember having strong career aspirations as a child, but I am pretty sure any thoughts along those lines were as silly as trying to set the world record for swing piling.

A second problem with Covey’s advice is related to the first: you probably do not have enough information, experience, or vision to chart your path far into the future. Recall that Bryan Stevenson, after one year of law school, was not sure he wanted to be a lawyer. He wrote:

Not long after I started classes at Harvard I began to worry I’d made the wrong choice. Coming from a small college in Pennsylvania, I felt very fortunate to have been admitted, but by the end of my first year I’d grown disillusioned. . . . The courses seemed esoteric and disconnected from the race and poverty issues that had motivated me to consider the law in the first place.¹¹

Though I loved the intellectual environment of law school, I also had a hard time finding my place as a lawyer. After working at a small business law firm in California during my 1L summer, I worked for two of the largest firms in the country in the East during my 2L summer. As we moved our small family from one city to the other in the middle of that summer, I wondered aloud to my wife whether I had made a mistake in going to law school. Fortunately, at the end of that summer, after trying every way I could imagine to find meaning in a litigation practice, I worked on a corporate transaction and found my calling. (For those of you who wonder how corporate transactions can feel like a calling, we probably need a separate conversation.)

Thus, rather than “Begin with the end in mind,” I suggest the following maxim: “Just begin.” Just throw yourself into your studies, trusting that you will discover your calling. Do not emulate the narrator of Robert Frost’s famous poem, who is still wondering



LEARN TO TRUST
YOUR PRESENT INTENTIONS.
LEARN THAT GOD
SPEAKS TO YOU THROUGH
YOUR THOUGHTS
AND RIGHTEOUS DESIRES,
EVEN IF HE DOES
NOT REVEAL THE WHOLE
PATH OF YOUR LIFE.

about “the road not taken” “ages and ages hence.”¹² Instead, learn to trust your present intentions. Learn that God speaks to you through your thoughts and righteous desires, even if He does not reveal the whole path of your life.

Cocreating the Path of Your Life

This last idea is one that we have the freedom to share because we are at a religiously affiliated law school, and I would like to say more about the role of God in this process. Often we think about “finding our path,” as if we are searching for our divinely ordained place in the universe. Perhaps God creates our path spiritually, and the purpose of our lives is to find and follow that path. My observation has been, however, that people who embrace this view are often paralyzed by the belief that they have irremediably fallen off the path or that they have wasted too much of their lives frolicking off the path. They wonder, “How can I ever make up for lost time?”

Whatever role God plays in our lives, I am absolutely convinced that he would not want us to despair. Earlier this year, when reflecting on the path of my own life, I came to the realization that no one had lived my life before and that no one would live my life in the future. My path is unique. No one has lived exactly where I have lived, has exactly my collection of family members and friends, has read exactly the books I have read, has worked exactly where I have worked, or has served exactly where I have served. No one else has made exactly my mistakes, and no one shares exactly my fears and insecurities. My path belongs to me alone.

This rather obvious observation opened my mind to the possibility that the path of my life does not yet exist and that one of my tasks in this life is to create that path. This, it occurred to me, is the essence of agency. In creating that path, however, God has not left me alone. He has offered to become a cocreator of the path of my life. I am reminded of a recent devotional address by Erin Kramer Holmes, a BYU professor in the School of Family Life, who stated: “God is not a dictator; instead He is a cocreator. His plan includes creating a remarkable life *with us*.”¹³

All of us are familiar with this famous exchange between Alice and the Cheshire Cat:

“Would you tell me, please, which way I ought to go from here?”

“That depends a good deal on where you want to get to,” said the Cat.

“I don’t much care where—” said Alice.

“Then it doesn’t matter which way you go,” said the Cat.

“—so long as I get somewhere,” Alice added as an explanation.

“Oh, you’re sure to do that,” said the Cat, “if you only walk long enough.”¹⁴

We generally read this story as an indictment of Alice, and we think that she should have come to the Cheshire Cat with a destination, but I am sympathetic to her. If Alice made a mistake in this story, it was not in asking that question but rather in asking a cat! How many times, in one way or another, have I asked God the question “Would you tell me, please, which way I ought to go from here?” I believe that is a question we should continue to ask throughout our lives, not only for those big career decisions when two roads diverge but time and time again.

Conclusion

The study of law will expand your vision and your opportunities. Unlike graduate study in most disciplines,

in which students become increasingly focused, law students are exposed to new possibilities for their careers in almost every course. If keeping your options open seems like a high value, this is an enticing attraction to law school. For some students, however, this abundance of opportunities leads to indecision and paralysis. I suggest that you need not see very far into the future. Trust that your thoughts are promptings, and take whatever next step



you feel inclined to take. And when you have taken that step, take another. And another. Just begin, and before long you will find that your life has become surprisingly awesome.

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NOTES

- 1 Psalm 23:3.
- 2 Matthew 7:14.
- 3 1 Nephi 8:20; *see* verse 19.
- 4 D&C 3:2.
- 5 Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption* (New York: Spiegel & Grau, 2014), 3.
- 6 *Id.*, 8–10, 12–13.
- 7 *Id.*, 17–18.
- 8 *See* J. Reuben Clark Jr., “To Them of the Last Wagon,” in *Conference Report*, October 1947, 154–60, reprinted in *Ensign*, July 1997.
- 9 Stephen R. Covey, *The 7 Habits of Highly Effective People: Restoring the Character Ethic* (New York: Free Press, 2004), 95.
- 10 Stephen R. Covey, “Books: The 7 Habits of Highly Effective People, Habit 2: Begin with the End in Mind,” www.stephencovey.com/7habits/7habits-habit2.php.
- 11 Stevenson, *Just Mercy*, 4.
- 12 Robert Frost, “The Road Not Taken,” *Mountain Interval* (New York: Henry Holt, 1916), 9.
- 13 Erin Kramer Holmes, “Waiting upon the Lord: The Antidote to Uncertainty,” BYU devotional address, 4 April 2017.
- 14 Lewis Carroll, *Alice’s Adventures in Wonderland* (New York: Dover Publications, 1993), 41.



SCHOLARSHIP

AS DIALOGUE AND A CONSTRUCTIVE EXERCISE

*A Look at the
Investitures of Three BYU
Law Professors*

KIF AUGUSTINE-ADAMS • CHRISTINE HURT • BRETT G. SCHARFFS

PORTRAITS BY BRADLEY SLADE

At the beginning of the 2017–18 academic year, Dean Gordon Smith announced the appointment of three new chairs at the Law School. Professor Kif Augustine-Adams was named the Ivan Meitus Chair, Associate Dean Christine Hurt was named the George Sutherland Chair, and Professor Brett G. Scharffs was named the Rex E. Lee Chair. I have to admit that I did not—and still do not—have a clear picture of the origins of the term “chair.” Some internet searching revealed that the term derives from the symbolic use of physical seats to denote authority or achievement among clergy in medieval times and later at Church-founded universities. While the origins of the term are somewhat incongruous with our modern concept of a university, the symbolism remains the same: being appointed a chair denotes significant achievement in the areas of citizenship, teaching, and scholarship.

While students are witnesses to and beneficiaries of professors’ teaching, they get few glimpses into professors’ scholarship. There are two aspects of scholarship that I think are particularly hidden to students—or at least they were to me—that are worth mentioning.

The first is that scholarship is a dialogue, not a monologue. Academics are often described as working in ivory towers. While

the phrase does unfortunately ring true in the context of the actual architecture of the BYU Law School, where the faculty sits on the fourth and fifth floors of an ivory-colored building, the image is wrong in what it suggests. Scholarship is, at bottom, an engagement with other scholars and with the world in which the scholar writes.

I remember my first glimpse into scholarship as dialogue. During my sophomore year at BYU, I took a course from Dr. Scott Cooper in the Political Science Department. One of our reading assignments was an article entitled “The Clash of Civilizations?” by Samuel P. Huntington. Up until that point, to me an article represented a culmination of work, a sign of satisfaction that the author had finally figured it out. To be sure, many pieces of scholarship do read this way. But this article had a question mark at the end of the title. The article felt important because it started a conversation in our classroom. Years later I realized that the article probably started a broader conversation among other political science experts that still goes on today.

—D. Carolina Nuñez,
Associate Dean, BYU Law School
*Adapted from remarks
offered at the investiture ceremony
of Kif Augustine-Adams*

A scholar’s task is to be present in the conversation. We hope our work will contribute to and further existing conversations or begin new ones. Scholarship, at the end of the day, is always a collaborative task.

The second hidden aspect is that scholarship is a constructive exercise. In law school we are trained to deconstruct everything we read. As professors, we put cases in front of our students and ask them to identify the problems in the decisions. We point out the inconsistencies. We question the reasoning. In short, we pull each brick out until we are left with a pile of rubble. But deconstructing is only useful if we employ it to learn how to construct something. Pulling apart a pair of pants and laying them out flat is a great way to figure out how to make your own pair of pants. Taking apart a computer is a valuable way to understand how it works and how to build your own. Scholars, true scholars, sort through rubble with the aim of building something that is better—something that is useful or beautiful or helpful. I think this is the defining characteristic of much of our professors’ work.

I invite you, our extended Law School family, to read the following excerpts of the remarks presented by Professors Augustine-Adams, Hurt, and Scharffs at their investiture ceremonies in order to engage in the dialogue and the building of an improved legal system.



TAKING REFUGE IN LAW

KIF AUGUSTINE-ADAMS • IVAN MEITUS CHAIR

They lived two doors apart on Calzada America in Nogales, Mexico—the private attorney and former federal judge Arsenio Espinosa and the current judge Joaquin Silva, before whom Espinosa had to plead Carlos Wong Sun’s case. Wong Sun had turned to Espinosa to challenge enforcement of Law 31, Sonora’s 1923 anti-miscegenation law that prohibited marriage and other intimate relationships between Chinese men and Mexican women. If Wong Sun’s case had come before him as a petitioner in 1924, then-Judge Espinosa would have granted *amparo*—federal judicial relief—on constitutional grounds, which he did for many other Chinese petitioners and their Mexican companions. But in 1929 Joaquin Silva judged in Sonora, and Wong Sun, represented by Espinosa, lost.

In June 1925 the federal attorney general had suddenly (and without public explanation) ordered Judge Espinosa from Nogales, Sonora, to Tijuana, Baja California.¹ Espinosa’s abrupt transfer to Tijuana came as he consistently and controversially relied on the new 1917 Constitution to grant *amparo* to Chinese men and Mexican women who challenged discriminatory actions under Sonoran state and municipal laws. If the purpose of the transfer was to remove Espinosa from the bench and change the legal dynamic for Chinese petitioners in Sonora, it succeeded. No federal judge who came after him defended constitutional principles and the legal rights of minorities the way Espinosa had. Judge Silva was the first judge to issue a ruling that explicitly rejected Espinosa’s

deployment of the 1917 Constitution to relieve the suffering of the persecuted Chinese minority.

THE MEANING OF LAW

For a country ravaged by the horrific violence of the 1910 Revolution and the preceding decades of Porfirio Diaz’s dictatorship, Mexico’s 1917 Constitution expressed hope in the rule of law. What the Constitution, and more broadly law itself, would mean in post-revolutionary Mexico depended on complex interactions among federal, state, and municipal governments in all three branches—always with the background threat, and sometimes the actuality, of renewed violence and militarism.

At the same time, law was profoundly personal, as Quong Fat and fellow business



Photo of United States Army soldiers and Mexican soldiers guarding the international border (International Street) at Nogales, Arizona, and Nogales, Sonora, during the Mexican Revolution (1910–20). The metal obelisk at the center is a border marker and still stands today.

owners could attest when municipal authorities ordered the closure of their businesses and as Carlos Wong Sun and Juana Ramirez discovered when the civil registrar refused to recognize their marriage. The Chinese experience in Sonora in the early 20th century reveals the complexities inherent in aspiring to the rule of law in a country in legal transition. With formal institutional structures of government in place, the informal but powerful court of public opinion also molded conceptions of law.

SONORA IN MEXICO, CHINESE IN SONORA

A number of historical elements make the Chinese experience in Sonora particularly instructive regarding the post-revolutionary development of law and constitutional interpretation in Mexico. First, in both revolution

and reconstruction, Sonora played a key political and legal role. Second, Sonora hosted the largest Chinese population of any Mexican state through the 1920s, even while discrimination against Chinese there was acute. Moreover, the Chinese experience in Sonora became one of law in ways it did not in other parts of Mexico.

During the 1910 Revolution, Sonora served as a key staging ground for military forces.² Venustiano Carranza—president of Mexico from 1917 until his assassination in 1920—used Sonora’s capital as his military headquarters.³ Álvaro Obregón gathered revolutionary forces in Sonora that then swept violently across western Mexico in 1914.⁴ Sonora’s strategic importance and revolutionary leadership translated into significant influence in the creation of the

1917 Constitution and near-hegemony in national leadership through the 1920s. All three Mexican presidents from 1920 to 1928 hailed from Sonora.⁵ As one historian stated, in 1920 “the Sonorans took control of the nation” to reform and remake it as they had their own state.⁶ That remaking included concentrated discrimination against Chinese, both de facto and de jure.

Furthermore, Sonora acted as a fulcrum between the competing values of national integration and regional power. Even during the Sonoran dynasty, Sonora continued to assert itself against the federal government through its treatment of Chinese. Chinese immigration to Mexico had skyrocketed to more than 24,000 by 1926.⁷ In the 1930 census, Chinese were the largest group of foreigners in Sonora at 3,571.⁸ By

1940, however, the Chinese population had shrunk to only 92 in Sonora and to under 5,000 in all of Mexico,⁹ a sad testament to the effects of anti-Chinese discrimination throughout the country.

In Sonora, government entities enacted rampant anti-Chinese prejudice into law. State legislation and municipal ordinances sought to govern everything from where Chinese people could establish their businesses and whom they could marry to whether they could effectively avail themselves of the constitutional right to naturalize and become citizens. At the same time, Chinese men and their Mexican partners deployed law to defend themselves through amparo petitions. By relying explicitly on the 1917 Constitution, Chinese asserted the legitimacy of federal law and its power to protect them from state and local discrimination. They took refuge in law and legal process.

Interwoven in the analysis of Chinese petitions for amparo and institutional approaches to law run the rich threads of individuals using law in their everyday lives. Recently, I completed a chapter entitled “By a Single Vote: Quong Fat and Chinese Amparo Petitions Before the Supreme Court of Mexico, 1917 to 1932” for a Mexican Supreme Court volume honoring the 1917 Constitution’s centennial.¹⁰ The chapter begins with a desperate telegram from attorney Agustín Centeno Barcena regarding the threatened expulsion of Chinese from Sonora in late 1919. The clipped phrases of his message punctuated its urgency: “Municipal government of Cananea, supported by governor, to close Chinese stores, confiscate merchandise, expel all Chinese on December 31st. Beg Congress direct the Secretary of War order federal military leaders in Sonora to send sufficient troops Cananea, guarantee safety of Chinese, avoid assaults, probable massacre.” The threatened expulsion of his Chinese clients was less than two weeks away as he begged the National Chamber of Deputies to act.

Quong Fat’s case before the Supreme Court revolved around enforcement of Sonora’s 1919 Labor Law, which required businesses to employ at least 80 percent Mexican nationals. The municipal government of Cananea had fined and imprisoned 19 businessmen and closed their businesses



*Nogales, Sonora, February 1933:
Chinese people entering the United States after being run out of Mexico.*

for allegedly employing too many fellow Chinese. The Chinese sought amparo. A mere two days before the threatened expulsion, the Supreme Court finally began reviewing the case. Ultimately, by a majority of one vote, the Court found that the fines and imprisonment imposed on Quong Fat and his compatriots did not violate the 1917 Constitution’s right to work or the separation of judicial and administrative responsibilities.

In May 2017, I published “Women’s Suffrage, the Anti-Chinese Campaigns, and Gendered Ideals in Sonora, Mexico, 1917–1925.”¹¹ In the decade after the 1917 Constitution, at least two women in Sonora, María de Jesús Váldez and Emélida Carrillo, sought greater political participation for women at the same time that they sought to exclude and expel Chinese from the state. Historians identify Emélida Carrillo as the only Sonoran woman actively seeking suffrage in the 1920s, but they fail to note the virulent racism on which her argument depended.

Carrillo petitioned the Sonoran State Congress directly for the right to vote in March 1925, stating, “We want the right to vote and to stand for election just as do adult men.” She questioned the congress, “Are women so unworthy that you compare us with delinquents, with thieves, with animals? Do you suppose that we don’t have souls and

intelligence, so you can treat us like animals? Or, perhaps you expect that we will organize a coup and rise up with arms, as appears to be the Mexican custom?” Delinquents, thieves, and animals could not vote in Mexico; neither could women. Men fought violently for suffrage; women might too.

Carrillo sought the franchise for Sonoran women with a focused purpose: vanquishing the Chinese. At bottom, her petition in favor of women’s suffrage relied as much on hatred of Chinese people as on women’s intrinsic merit as human beings of dignity and intelligence. Carrillo approached female suffrage instrumentally, as a means to a specific end rather than as an inherent good or right in and of itself. Carrillo seems naively optimistic that the anti-Chinese legislators in the Sonoran State Congress would see the justice of granting women the vote. Her petition failed. Sonoran women did not receive the vote until nearly 30 years later.

My earlier scholarship investigated other aspects of legal development in post-revolutionary Mexico, first in “Making Mexico: Legal Nationality, Chinese Race, and the 1930 Population Census”¹² and then in “Marriage and *Mestizaje*, Chinese and Mexican: Constitutional Interpretation and Resistance in Sonora, 1921–1935.”¹³ “Making Mexico” explores the interactions involved in the 1930 Mexican census. The

census sought to draw Mexico's inhabitants into the national fold, in part by the act of counting itself, in part by eliminating any count of race. In the official narrative, race no longer stratified Mexican society. The official census count of 3,571 Chinese in Sonora tells a tale of the contested nature of that purported reality. The census count derived from different perspectives, enacted by counted individuals, census takers, civil service employees, and consumers of official data; by census categories; by legal constructs of nationality and marital status; and by social constructions of race. Law informed but did not decide who counted as Mexican in the 1930 census.

"Marriage and *Mestizaje*" highlights resistance to Sonora's 1923 anti-miscegenation Law 31 as Mexican women and Chinese men brought amparo petitions. Judge Espinosa made real in the lives of a despised minority the promises of equality and liberty set forth in Mexico's 1917 Constitution. He did so by strictly applying the law and, thus, asserting the supremacy of the federal Constitution over discriminatory state and municipal laws—a bright moment of constitutional interpretation and judicial independence in Mexico.

Currently, I am working on two additional pieces of this scholarly project. The first involves Chinese resistance to the segregation imposed by Law 27, passed as a companion to the anti-miscegenation Law 31. Law 27 sought to segregate Chinese



Nogales, Sonora, mid-1930s

power. That debate occurred within formal institutionalized processes of judicial decisions, legislative enactments, and executive decrees but also in newspapers, political campaigns, and the everyday lives of citizens. Twenty-five women in Nacozari de García sent a petition to the Sonoran State Congress protesting Law 31, arguing that it unfairly restricted basic liberty and rights regarding marriage.¹⁴ They argued for the rule of law even as they protested a specific law.

In 1924 the municipality of Cananea imprisoned and fined Filomena Valdez and

February 29 when *El Nacionalista* and *El Intruso* [two anti-Chinese newspapers] published notices regarding the jailing of five Chinese men and their respective female partners, including me among the women. As a review of official records would reveal, I was not taken to jail. It is true that I live with Mr. Pablo C. Wong. In fact, I have lived with him for eleven years during which time there were no laws that prohibited our relationship. Therefore, no one has the right to condemn our relationship because laws cannot have retroactive effect."¹⁷

Valdez did not cite Article 14 of the 1917 Constitution, but she could have: "No law shall be given retroactive effect to the detriment of any person." The 1930 census data indicates that Filomena Valdez was an uneducated woman who could neither write nor read.¹⁸ Nonetheless, in a public forum she defended herself and her life in legal terms through an appeal to a basic principle of justice and the rule of law.

These are the people about whom I care most—Filomena Valdez and Pablo Wong, the women of Nacozari de García, Carlos Wong Sun and Juana Ramirez, and Quong Fat and his 18 coplaintiffs. They placed their tremulous hope in law and legal process, in a Constitution whose first article guaranteed its rights and protections to every individual present in the Republic—national or foreigner. Their understanding of law may

I find hope in these stories, hope that Mexico can see in its own history a model for lawyers and judges and lay people to organize around law rather than violence.

spatially in *barrios chinos*, Chinese ghettos. I examine how similar racial zoning laws in the United States influenced the anti-Chinese activists who sponsored Law 27 in Sonora. The second article explores the way religion and the anticlerical post-revolutionary Mexican state compounded racial discrimination against Chinese in Sonora.

The Chinese experience in Sonora exposed a debate most fundamentally about law, its meaning, and its organizing

her partner Pablo Wong \$100 each for violating Law 31's anti-miscegenation provisions.¹⁵ Through an amparo petition, Valdez and Wong sought judicial relief, arguing that they had "lived together for more than [eleven] years without public scandal and without offending public morals in the least."¹⁶ The day before she took formal legal action, Valdez purchased a paid notice on the front page of the newspaper *El Intruso* to argue, "I have seen the numerous comments since



Nogales, Sonora, February 1933: Chinese people forced out of Mexico.

not have been sophisticated or learned like that of attorney Agustín Centeno Barcena or Judge Arsenio Espinosa. Nonetheless, their willingness to rely on legal process and turn to the courts helped move post-revolutionary Mexico toward law as its organizing principle. I find hope in these stories, hope that Mexico can see in its own history a model for lawyers and judges and lay people to organize around law rather than violence and perhaps combat the near-revolutionary levels of violence that plague it today.

Likewise, I am interested in how elite, privileged individuals used their legal training to benefit and protect the disadvantaged. When Chinese petitioners had attorneys to represent them in their amparo claims, they had a much better chance at receiving the amparo they sought. Lawyers matter. In the United States during the violent period of Jim Crow segregation, lawyers—especially lawyer and future Supreme Court Justice Thurgood Marshall—mattered. When Marshall traveled south, “there rose whispers of relief: the lawyer was coming.”¹⁹ I imagine Chinese in Sonora likewise whispered with relief, “*Ay viene el abogado.*”

It is here that my scholarship intersects with advocacy and pedagogy. Several of my colleagues and I travel with law students and new graduates to Dilley, Texas, to volunteer with the CARA Pro Bono Project at the South Texas Family Detention Center, which

houses hundreds—sometimes thousands—of women and children who are fleeing violence, conflict, and oppression in other countries. Our main purpose is to prepare the women for their credible fear interviews with asylum officers. When lawyers and law students are present to help, more than 90 percent of the women are released from detention to pursue asylum claims in the United States. Without lawyers, the majority are deported back to the violent situations they fled. The good work our students do in Dilley teaches the disempowered to take refuge in law.

The lawyers and law students are coming.



NOTES

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- 2 Cynthia Radding de Murrieta and Juan José Gracida Romo, *Sonora: Una historia compartida*, 322–33 (México: Instituto de Investigaciones Dr. José María Mora, 1989), 322–33; Barry Carr, *The Peculiarities of the Mexican North, 1880–1928* (Glasgow: University of Glasgow, 1971), 1.
- 3 Radding de Murrieta and Gracida Romo, *Sonora*, 322.
- 4 Carr, *Peculiarities*, 8.
- 5 Cynthia Radding de Murrieta and Rosa María Ruiz Murrieta, “La reconstrucción del modelo de progreso 1919–1929,” in *Historia General de Sonora*, vol. 4, *Sonora moderno 1880–1929*, 315–54, 319–21, ed.

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- 6 Radding de Murrieta and Gracida Romo, *Sonora*, 146, 148; see also Héctor Aguilar Camín, *La frontera nomada: Sonora y la revolución mexicana* (México: Siglo Veintiuno Editores, 1977), 9 (“The Sonoran hegemony in the post-revolutionary years was of vast and lasting effect.”).
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- 8 Dirección General de Estadística, Quinto Censo de la Población, Estado de Sonora, México, D. F. (1934), Población clasificada por nacionalidad y sexo, 109.
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- 11 Kif Augustine-Adams, “Women’s Suffrage, the Anti-Chinese Campaigns, and Gendered Ideals in Sonora, Mexico, 1917–1925,” 97(2) *The Hispanic American Historical Review* 223–258 (2017).
- 12 Kif Augustine-Adams, “Making Mexico: Legal Nationality, Chinese Race, and the 1930 Population Census,” 27(1) *Law & History Review* 113–44 (2009).
- 13 Kif Augustine-Adams, “Marriage and *Mestizaje*, Chinese and Mexican: Constitutional Interpretation and Resistance in Sonora, 1921–1935,” 29(2) *Law & History Review* 419–63 (2011).
- 14 “Al margen del Problema Chino,” *El Intruso*, 29 de diciembre de 1923, 1; “El Problema Chino—Iniciativa de un muy honorable ayuntamiento,” *El Intruso*, 28 de diciembre de 1923, 2.
- 15 *El Intruso*, 29 de febrero de 1924, 1.
- 16 Amparo Petición 364A, Pablo Wong y Filomena Valdez, 6 de marzo de 1924.
- 17 *El Intruso*, 5 de marzo de 1924, 1.
- 18 Census, Sonora, Cananea, image 70, line 86; <https://www.familysearch.org/ark:/61903/1:1:M49V-VZ8>, <https://www.familysearch.org/ark:/61903/3:1:S3HY-6SM3-2NM?i=69&cc=130731>.
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FINDING INTELLECTUAL PASSION IN INITIAL PUBLIC OFFERINGS

CHRISTINE HURT • GEORGE SUTHERLAND CHAIR

Early in my career I set my scholarly sights on the initial public offering (IPO)—the ultimate big-game trophy animal. As you may know, the IPO is, or at least used to be, a rite of passage for the small subset of corporations that grow beyond closely held firms to issue shares to the public and be listed on a national exchange.

Many, if not most, incoming law students would say that they are going to law school to help people, to make the world a better place, to fight for justice. But corporate law, tax law, and partnership law do not inspire and motivate many humanities majors to go to law school. So, what about my research inspires passion to the degree that I chose to title my remarks “Finding Intellectual Passion in Initial Public Offerings”? IPOs are definitely intellectually challenging and engrossing, but that is not enough to sustain a passion.

Over time I have realized that the beauty of the law is not only that the rule of law creates equals among men and, if dependable, can right the wrongs borne out of bigotry, corruption, and madness. The rule of law also creates an environment in which every citizen benefits from the almost invisible background of strong and true institutions, whether those institutions are law enforcement, systems of K-12 and higher education, an independent judiciary, an independent press, or yes, even sound financial institutions and capital markets.

These are legal luxuries that we take for granted but that are definitely not found in every country around the world. My work has focused on the legal underpinnings of our financial markets, looking for strengths and weaknesses that we can build upon or rework in order to support that invisible background.

THREE IPO GATEKEEPERS

The purpose of an IPO is to give a firm access to the capital market. Raising capital by offering shares to the public strengthens the company and allows it to funnel that capital into various pursuits, such as research and development, marketing, supply chain management, and growth. Three gatekeepers stand between issuers and investors in the capital markets—attorneys, accountants, and investment banks—and corporations must enlist the help of all three in order to successfully navigate an IPO.

In 2002, as I moved from five years of private practice to academia, I began by studying and publishing about the gatekeepers I knew: attorneys. After that, I quickly realized that no one wanted to read an article about accountants (and I did not want to write one), so in 2004 I began focusing on the third capital market gatekeeper: investment banks.

I approached this topic by looking at federal regulation of IPO investment banking practices. That article was a bit tricky for me because I had practiced corporate finance,

an area in which we assiduously sought to stay out of securities regulation, and I had not yet begun teaching securities law. However, the purpose of academic writing is to discover new approaches to interesting topics, so I went forward and immersed myself in the inertia of securities regulation.

In preparation for registering with the Securities Exchange Commission to sell its shares to the public, a company (referred to as a “firm”) must hire a law firm, a public accounting firm, and an underwriter. In the world of IPOs, “the firm” or “the issuer” is identified with the individuals who control the firm, mainly the CEO and the board of directors.

Typically, the CEO during an IPO is the firm founder, unless the cofounders have ousted one or more of their compatriots and/or the firm has existed in Silicon Valley long enough for the venture capitalist shareholders to oust the founder and replace him or her with a professional manager as CEO. Often we refer to “the firm” but mean the founders, alongside large investors such as venture capital firms or angel investors.

The gatekeepers’ function, then, is to ensure that the firm is not a fraud. The accountants audit the financials and provide “comfort letters” to the underwriter to make sure the books are not being cooked. The accountants will only sign the required comfort letter if they are satisfied that no fraud is being committed on the public, the intended consumer.

The investment banks act more like a sales force because they are usually obligated to purchase any unsold shares when the firm goes public. These banks are subject to liability for false statements in registration materials and selling documents, so they also theoretically have an incentive to ensure that the company is a straight—or at least not-too-crooked—arrow.

Finally, the law firms that take companies public counsel those companies regarding how to get their legal houses in order and how to be honest and straightforward in their registration materials. Because only a handful of law firms operate in the IPO industry, the theory is that they can charge high rates because of the reputation their names lend to unknown startup firms. My research questioned these gatekeeper theories as to the attorneys and investment banks.

THE ATTORNEYS

During the last (really) hot IPO market in the late 1990s, attorneys strayed away from their hourly IPO fee, which was thought of in the industry as their “reputational rent.” During that time, many very young, unseasoned startups went public with little cash and before they had several quarters of profits.

To combat this, several law firms, mainly in the Bay Area, championed a fee innovation: law firms would be given pre-IPO shares in lieu of, or sometimes in addition to, an hourly fee.

In 1999, Silicon Valley law firms took 173 clients public and held IPO shares in 99 percent of these firms. The upside was that if an IPO went forward, the shares acted as a bonus—an enormous bonus. Instead of a legal fee of \$250,000 or \$500,000, firms were reaping 10 or 100 times that amount in IPO shares.

Because of the ways in which investment banks price IPO shares, those shares that are allocated before the opening bell are sold at the IPO price. Then, when the shares become available to the public, the price may rise relative to market demand. In a hot IPO market the shares could be worth much, much more by the end of the day.

This “pop” is a huge advantage to those who are given pre-IPO shares, including law firms.

Now, nothing in the Model Rules prohibits lawyers from investing in their clients. Attorneys are not supposed to charge an “unreasonable” fee, but that is all the guidance that is given. What was the problem then? Was there a problem?

My theory was this: A deal lawyer’s role is to tell the client when to slow down, walk away, or keep going. In an IPO, the lawyer finds the weak spots in the company and discloses these risks and weaknesses in the registration statement. If the attorney finds something that is not only material but extremely negatively significant, then the lawyer should counsel the firm

to postpone the IPO. However, if an attorney is looking at an eight-figure “bonus” if the IPO closes and finds a hot audience, then the attorney may be tempted not to fully disclose weaknesses and definitely not to postpone or cancel an offering.

By the time I started my scholarly work on this issue, the hot IPO market of the late 1990s was over. A robust IPO market has not entirely returned, so the issue has drifted away for the most part. In addition, testing this theory is not easily done because the empirical data on which firms hired investor attorneys is not public. However, I have noted that many firms with known attorney investors are now in the trash bin of history.



THE INVESTMENT BANKS

The gatekeeper with the most control in the initial public offering is the investment bank—the underwriter. Back in the day, before the internet, before the online SEC portal EDGAR,¹ and before personal computers and cable television, the underwriter was the sole distributor of information about an upcoming IPO. Underwriters met personally with potential institutional investors and high-worth individual investors and tested the waters for how much they would be willing to pay for a share of the IPO firm, building a “book” of potential buyers. Because of SEC regulation of sales efforts leading up to an IPO, this book-building method remains central to the U.S. system even today.

Underwriters then get to choose which investors get the IPO shares at the IPO price. They also set the price, arguably because

Raising capital by offering shares to the public strengthens the company and allows it to funnel that capital into various pursuits.

they have gained so much price information from the book-building process. However, IPO stocks in the United States on average gain 18 percent of their value during their first day of trading, enabling the lucky few who are allocated IPO shares to sell them the first day for a gain. During hot markets, such as the one we experienced in 1999, this 18 percent can be more like 65 percent, or even 100 percent for technology firms, resulting in quite a windfall for those who are able to purchase at the IPO price.

Surely the professional underwriters are not systematically estimating market demand this poorly. Imagine hiring a broker to sell your house and the broker sells it the next morning to a friend of his for \$200K. Then that friend resells it in the afternoon for \$236K or even \$330K. You would probably feel a little suspicious. My initial reaction to the underpricing phenomenon was that the founders, or at least the firm, if the founders were cashing out, were getting ripped off. Remember, the firm, just like our home seller, only gets the money from the first sale, not the secondary transactions.

The underwriter is supposed to be out in the market discovering the market price but

for some reason keeps mispricing the firm at 82 percent of the market price or less, short-changing the founders. And, of course, the reason seems to be to grant favors to their own investment banking clients.

This activity was investigated in the early 2000s and became the subject of the Global Settlement between 10 investment banks, the SEC, the Department of Justice, and Eliot Spitzer as attorney general of New York. The banks did not admit or deny in the settlement that they were intentionally underpricing to line their friends' pockets. In fact, many have argued that underpricing is logical and good for all involved.

My solution in 2003 was to turn to the online auction IPO. In a Dutch Auction IPO, shares are sold online in a process in which would-be purchasers submit bids for a certain number of shares at a particular price. The clearing price, or IPO price, is the highest price at which all the IPO shares are sold. Theoretically, founders would then capture 100 percent of market demand, not 82 percent. In addition, online auctions "democratize" IPOs by theoretically allowing anyone to "get in" on an IPO, not just friends and family of the founder, institutional investors, and regular customers of the investment bank. Not coincidentally, shares issued in Dutch Auction IPOs generally have very low "pops" on the first day, confirming the theory that the firm was collecting the full market price with no underpricing.

As luck would have it, just as I was publishing my first paper on this topic, Google announced in 2004 that it would go public using an online IPO auction. Google's IPO was deeply flawed and did not show off the IPO auction to its best advantage, but something significant happened. The institutional investors stayed away. The smart money boycotted, or at least that was the rumor. The IPO auction that was supposed to bring this new technology into the mainstream all but buried it. But not because Google was a poor long-term investment.

I soon realized that the underwriters—and remember that there are only a handful of name-brand IPO underwriters—are necessary for creating or at least discovering market demand. It turns out that 100 percent of non-underwriter-backed IPO market demand is less than 82 percent of

an underwriter-backed IPO market demand. Disintermediation is tougher than it looks.

The internet continues to inspire ways in which startup firms can raise capital without underwriter intermediaries, but of course they charge identically high fees for their own services.

Crowdfunding has been the 2010s' answer to the online IPO, with the same promises of disintermediation as well as democratization. However, I have also theorized in several articles that equity crowdfunding will carry the same stigma as the auction IPO for those firms that try to use crowdfunding as a step toward IPO. Side-stepping Wall Street is not easy.

PUBLICLY TRADED PARTNERSHIPS

Now, while much of my scholarship has been on initial public offerings, which almost always involve corporations, the business entity that is most interesting to me is the partnership. Five years ago Dean Gordon Smith and I became the lead authors on *Bromberg & Ribstein on Partnership* when our friend and mentor Larry Ribstein and then Alan Bromberg (the original authors) passed away. With as much work as we have put into the treatise, I am, as with IPOs, fascinated by the beauty and logic of partnership law.

The original partnership reflects core values of a society: individuals choosing a small number of others to create a firm and the partners working to further the enterprise and sharing control. Partners have duties to the entity and to each other. The entity and the partners are responsible to the outside world for debts of the partnership. The partnership is more valuable than the sum of its partners.

Limited partnerships, limited liability partnerships, and limited liability limited partnerships create more corporate-like entities several steps away from this ideal. The payoff for these types of formations is that the partnerships can be larger, attract more capital from dispersed investors without familial or community ties, and ensure management that they will be free from frivolous investor litigation.

My latest research focus—the publicly traded partnership—combines my interests in IPOs and partnerships with my interest in

entity taxation. Master limited partnerships (MLPs), or publicly traded partnerships, are limited partnerships stripped of duties and control rights but with the liquidity of publicly traded units on a national exchange. And because of a specific exception in the tax code, they receive flow-through partnership taxation. MLPs are growing in number, and my research focuses on the opportunism created in these MLP agreements.

As I mentioned, I inherited in some part the law of partnership from my mentor Professor Ribstein. I have been appointed to the George Sutherland Chair, named in honor of Supreme Court Justice George Sutherland, who, like my mentor, was a staunch believer in the freedom of contract. Regarding MLPs, Professor Ribstein once wrote that they should benefit managers and unit holders alike from a governance aspect, even without fiduciary duties, if unit holders had certain contractual rights. Studies have shown that the latest MLPs do not contain those contractual safeguards. Because Professor Ribstein is not here to do so, I am passionate about highlighting that need.

Shortly before his unexpected death, I was talking to him about some experiences I had while trying to study microfinance in Malawi and how frustrated I would get with the lack of basic systems there that we rely on in the United States, this invisible background of institutions and infrastructure. I suddenly got quite emotional and blurted out, "Sometimes I think that the law can really get in the way of human flourishing."

Professor Ribstein, who was not a touchy-feely person, became equally emotional and replied, "Christine, that is what I have been writing about all my life."

I too am learning that all law, not just criminal law or constitutional law, can encourage or impede each child of God on their path to perfection.

NOTE

- 1 EDGAR is the commonly used acronym for the Electronic Data Gathering, Analysis, and Retrieval system. All companies that are required to file registration statements and other reports and forms with the SEC do so through EDGAR, and those filings are freely available and searchable by the public. See <https://www.sec.gov/edgar/aboutedgar.htm>.



AFTER THEORY

AN ARISTOTELIAN CONCEPTION OF LEGAL JUDGMENT

BRETT G. SCHARFFS • REX E. LEE CHAIR¹

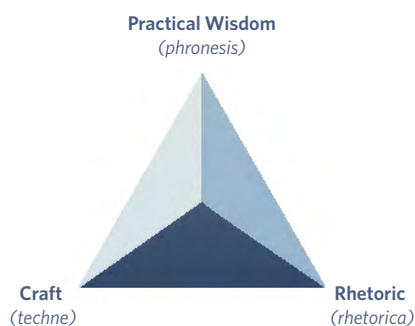
Most of my current work at the Law School focuses on freedom of religion, but my early articles as a law professor were about the nature of legal reasoning. That work culminated in an article called “The Character of Legal Reasoning,” in which I argued that legal reasoning and judgment are best conceptualized as lying at the intersection of three ideas that were at the heart of Aristotle’s practical philosophy: practical wisdom, craft, and rhetoric.²

I would like to return to the themes of that article and develop further a pair of propositions: (1) that good judgment lies at the heart of being a good lawyer or judge and (2) that the path to fostering good judgment lies in traveling the roads that will help us develop the virtues of being a person of practical wisdom, a master craftsman, and a responsible rhetorician.

This lecture’s title is an oblique reference to Alasdair MacIntyre’s plea a generation ago in his book *After Virtue* to return to an Aristotelian understanding of ethics.³ However, whereas MacIntyre was concerned with moral philosophy, my concern is rather more terrestrial: the everyday work of lawyers and judges.

So what might an Aristotelian conception of legal reasoning look like? Practical wisdom, craft, and rhetoric⁴ are each central to Aristotle’s practical philosophy. Equally important, and less understood, is the relationship between these concepts, which is illustrated by a triangle in which good legal reasoning and judgment are bounded by practical wisdom, craft, and rhetoric.

The Three Components of Legal Reasoning



PRACTICAL WISDOM

The distinctive character of practical reason is that it is concerned with deliberation, choice, and action and with what should be done in particular situations involving decision. Aristotle calls excellence in practical reason practical wisdom.

The person of practical wisdom is adept at reasoning about complex, competing, incompatible, and even incommensurable values. The key to understanding Aristotle’s concept of practical wisdom is that it is composed of both virtue of intellect and virtue of character. As a result, excellence in practical rationality is not primarily a matter of following rules or creating an optimal set of incentives, nor is it embodied in a theory. It is embodied, however—embodied in the individual person of practical wisdom. When faced with a difficult practical choice, Aristotle advises that we find a person of practical wisdom, or, better yet, several of them, and ask them to reason together about what should be done.

CRAFT

Aristotle defines craft as the “reasoned state of capacity to make.”⁵ Craft is primarily concerned with how something should be done. In Aristotle’s typology, it is a virtue of intellect only, combined with the right sort of passion or love for the craft tradition.

Craft is characterized by its emphasis on making objects one at a time, rather than en masse, and in its emphasis on the skillful use of materials and tools. Craft is also distinctive for the way it is learned and transmitted: through apprenticeship by experts leading and guiding novices. Success in craft is measured by the synthesis of form and function. For example, a good chair will not only look beautiful, but it will be sturdy, bear weight, and not give you a backache.

RHETORIC

Rhetoric is concerned with persuasion. As Aristotle explains it—and as rhetoricians have taught for millennia—there are three means of persuasion.

The first is reason, or *logos*, and it takes the form of syllogisms (arguments based upon deduction and proof) and enthymemes (arguments based upon induction and probabilities).

The second is by appeals to emotion, or *pathos*. Aristotle criticized professional teachers of rhetoric of his day for focusing unduly upon emotional appeals, but his own account of rhetoric is filled with advice about how to elicit the desired emotional response from one’s audience.

The third is through one's character, or *ethos*. The key idea is that we are most inclined to believe those whom we can trust, not only because of their reputation or skill but because of their character.

Aristotle also makes a very important point about what counts as success in rhetoric. On the one hand, there is the external measure of success: winning. On the other hand, there is an internal measure of success, which is to make the best possible argument under the circumstances—an argument that is cogent, coherent, and honest.

The ends of practical wisdom, craft, and rhetoric are each evident in the law and, in particular, the work of judges. The judicial decision or holding corresponds to the action required of practical wisdom. A judge does not have the luxury of endless deliberation; a judge must make a choice and act. The judicial opinion is a craft artifact that serves a useful purpose not unlike other craft objects. It is also something that can be criticized and praised as good (or not), sound (or not), and useful (or not) in much the same way that other craft objects are evaluated and assessed. Judges also engage in rhetoric, providing arguments designed to persuade the parties and other concerned readers that they decided the case correctly. Rhetoric is also involved in judges' efforts to persuade each other—in the first instance, to create a majority in favor of a particular outcome among judges hearing the same case and, secondarily, to influence other judges who will read the opinion and decide whether and how to apply the law articulated in the opinion.

RULES AND PRACTICAL JUDGMENT

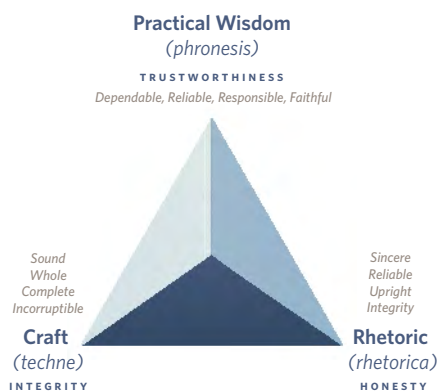
As different as these three practical activities are, they share an important quality: all depend upon the human capacity for exercising practical judgment—for responding to particular situations in ways that are appropriate and make sense. Rules are important to each of these three activities, especially for novices and apprentices, but none of these activities can be reduced to a set of rules, and they cannot be evaluated based upon a set of rules. The concepts of practical wisdom, craft, and rhetoric are each components of legal reasoning that carry attendant primary or cardinal virtues

that are subject to standards of reason. They each also carry risks, or a darker side. Ultimately, each of these concepts has an ameliorative or healing effect on both of the other two ideas. I use these ideas as something of a roadmap for thinking about legal reasoning and judgment.

THE CARDINAL VIRTUES OF PRACTICAL WISDOM, CRAFT, AND RHETORIC

I suggest that each of these three components of legal reasoning has a corresponding cardinal virtue.

The Cardinal Virtues of Practical Wisdom, Craft, and Rhetoric



Practical Wisdom and Trustworthiness

The cardinal virtue of practical wisdom is trustworthiness. The person of practical wisdom will be dependable, reliable, responsible, and faithful.

Craft and Integrity

The cardinal virtue associated with craft is integrity. The craftsman should strive to create work that is sound, whole, complete, and incorruptible. Unlike a work of art, a craft object must match form to function; a chair, no matter how beautiful, is defective if it cannot bear weight or is too uncomfortable to sit upon.

Rhetoric and Honesty

The cardinal virtue of rhetoric is honesty. Praiseworthy rhetoric will be sincere, reliable, and upright. To be sure, my claim that honesty is the cardinal virtue of rhetoric flies in the face of much of what we think about rhetoric and rhetoricians. But consider the relationship between the three means of persuasion and honesty. Logos must be

honest to be persuasive; arguments must be clear, candid, lucid, cogent, valid, and sound. Pathos will not be persuasive if passions are overwrought; emotional appeals must strike the right chord or register appropriate to the particular situation. And with ethos, if a speaker is upright, reliable, and dependable, the audience is much more likely to trust her.

THE DARK SIDES OF PRACTICAL WISDOM, CRAFT, AND RHETORIC

Each one of these concepts has significant weaknesses, an accompanying set of risks—a dark side.

The Dark Sides of Practical Wisdom, Craft, and Rhetoric



Practical Wisdom and Latent Elitism

The greatest risk associated with practical wisdom is its latent elitism. Some people are more practically wise than others. Virtues of intellect and character are not distributed equitably among all people, lawyers, or judges. And although we are rightly cautious about whom we hire to serve as advocates or appoint to serve as judges, we still have reason to be suspicious of practical wisdom. This is in part because we live in a society that highly values equality, and it is thus difficult to be comfortable with a concept that is so deeply inegalitarian.

Another reason to be suspicious of this elitism is that the person of practical wisdom may be unable to explain, at least fully, the reasons and grounds for her judgments. This inarticulateness may leave us wondering whether a judgment reflects wisdom, mere cleverness, or simple raw power.

Practical wisdom's elitism and inarticulateness may combine to lead to even more insidious dangers: private truths. Someone may be so convinced that he understands

what is good and right that he is willing to impose that view on others, even at tremendous costs, and this conviction may lead to totalitarianism or, in any event, judicial imperialism.

Practical wisdom is predicated on virtue of both intellect and character, and a lawyer or judge who possesses one of these types of virtue but not the other may be a particular peril. Intelligence without virtue, Aristotle warns, is mere cleverness, and clever judges in the grip of their own views of good are dangerous (indeed perhaps more dangerous than a thoroughgoing mediocre judge). And the judge who is virtuous but not intelligent will be a bundle of good intentions but will not be particularly adept at anticipating unintended consequences or matching means to ends.

Craft and Amoral Ideals

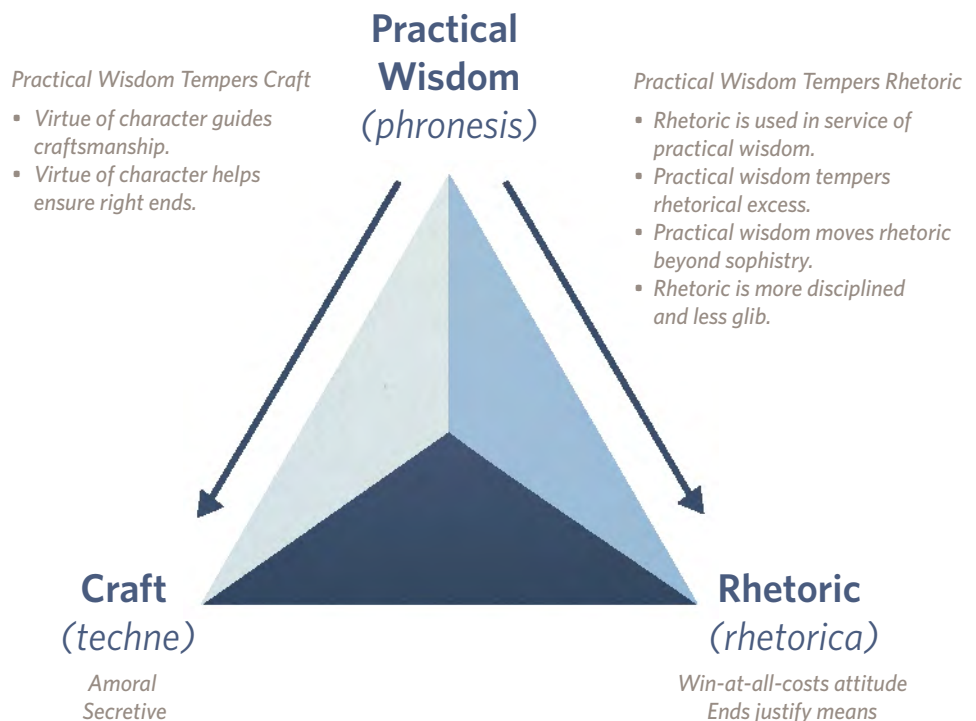
The dark side of craft is that it is largely an amoral ideal. One can bring the skills of the craftsman to the service of questionable or even horrific ends. For example, there is nothing oxymoronic about speaking of the “Nazi craftsman.” Some Nazi functionaries during the Holocaust described themselves with chilling pride as craftsmen in their methods of mass execution.⁶

Consider, too, the number of negative connotations associated with the word *craft*—crafty, secretive, misleading—connotations that illustrate its possibly crooked character. In short, the craftsman may be an amoral technician. Calling a lawyer or judge a craftsman is a great compliment, but being described as crafty is dubious praise at best. The line between craft and crafty, however, is often difficult to draw.

Rhetoric and Justification

What makes rhetoric problematic is its win-at-all-costs mentality, suggesting that a desired end justifies any means. With victory as the definitive measure of success, rhetoric has developed a suspect reputation as not only the art of persuasion but the art of manipulation. Immanuel Kant famously dismissed rhetoric as the disreputable business of using others’ weaknesses for one’s own personal gain.⁷ The rhetorician may become a demagogue—someone who endeavors to convince others that his ends are theirs.

How Practical Wisdom Tempers Craft and Rhetoric



Plato was especially critical of rhetoric, asserting that rhetoric can only be a true art if the speaker makes an effort to gain knowledge and learn the truth about his subject, makes the speech follow a logical structure by properly defining the subject and dividing it in a systematic way, and tries to fashion his speech to suit the nature of his audience.

THE AMELIORATIVE EFFECTS OF EACH COMPONENT OF LEGAL REASONING UPON THE OTHERS

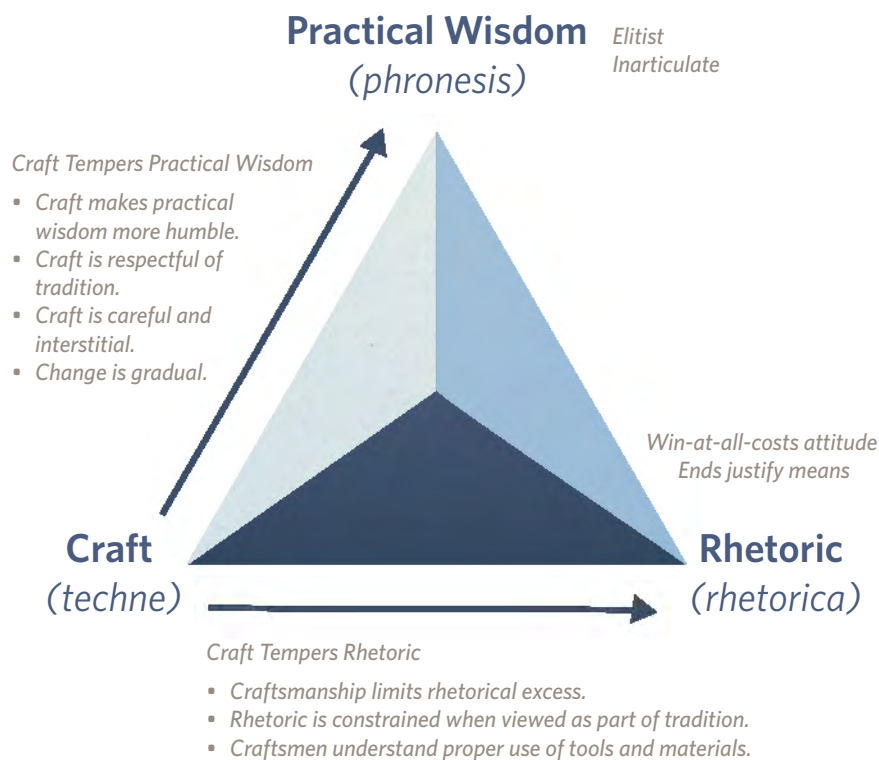
The negative side effects of practical wisdom, craft, and rhetoric are widely recognized. Much less understood is how each of these three components plays an important role in tempering the negative tendencies of the other two components of legal reasoning. One or even two of these concepts alone not only are incomplete as an account of legal reasoning but provide a potentially faulty roadmap for engaging in legal reasoning.

The Effects of Practical Wisdom

Unlike craft, which is a virtue of intellect only, practical wisdom is a virtue of both intellect and character. When coupled with practical wisdom, craft is imbued with a moral dimension and direction that it otherwise lacks, and the ends pursued are more likely to be correct or appropriate. When craft is divorced from practical wisdom, there is no reason to have confidence in the ends pursued by the craftsman, even one who is highly skilled.

When rhetoric is practiced by a person of practical wisdom, the rhetorician becomes more than a mere sophist, gladiator, or hired gun. There are some arguments and appeals that a salesperson or mercenary will be able and willing to make that the person of practical wisdom will not. Rhetoric tempered by practical wisdom is less glib, more disciplined, and has an element of gravitas that is lacking when it is untethered to practical wisdom.

How Craft Tempers Practical Wisdom and Rhetoric



Rhetoric, of course, with its appeals to emotion, fear, and bias, is the main culprit behind the informal logical fallacies that distract from logic and reason. The best lawyers will not only be skilled rhetoricians but also people of practical wisdom, and their good sense and judgment will help them differentiate between appropriate and inappropriate rhetorical appeals. The worst lawyers, on the other hand, some of whom may fancy themselves to be skillful rhetoricians, will not possess the disciplining and tempering trait of good practical judgment, and they will frequently overdo emotional appeals and use logical fallacies.

The Effects of Craft

Craft makes practical wisdom more humble. Unlike practical wisdom, which is at the pinnacle of Aristotle's practical philosophy, the status of the craftsman is much less exalted. In Aristotle's world, craftspeople were near

the lower end of the social spectrum—the cobbler making shoes, the potter spinning clay—and were typically not prideful or powerful.

Craft also has an attitude and posture toward the past that counteracts arrogance and elitism; creativity is welcome but is bounded by tradition. And craftspeople are unlikely to be impressed with grand theories and claimed universal truths. Rather, they rely upon know-how and experience, operating with a deep familiarity of what does and does not work. Departures from or refinements of tradition will be of a careful and considered character.

Lawyers and judges who are guided by the ideals of craft in addition to the ideals of practical wisdom will be more careful and circumspect. They will tend to view the role of judges with a measure of humility and may be viewed as being somewhat minimalist in their method. Judicial craftspeople

will be modest in their approach to adjudication and will be reluctant to make magnificent pronouncements or create dramatic inventions. They will value what Alexander Bickel called the passive virtues, deciding cases narrowly rather than sweepingly, eschewing grand theories, and having a reluctance to overturn statutes that represent majority preferences. They will care about separation of powers. They will more likely view themselves as part of a tradition that is to be respected and treated with care. They will be attracted to the old and not very fashionable ideal of prudence. A legal craftsman will care deeply about professional ideals and aspirations as well as concrete norms such as the rules of professional responsibility.

A craftsman-like attitude also limits rhetorical excess. Rhetoric is more constrained when it is viewed as part of a tradition, when the speaker has a sense of respect for the norms and examples of successful and appropriate advocacy that have come before. An attitude of the craftsman helps us focus not only on the external end of winning but on the internal end of making the best possible argument.

The Effects of Rhetoric

Rhetoric makes practical wisdom more articulate as well as less private and pretentious. It is committed to reason-giving and, in its desire to persuade, is deeply democratic. Indeed, one reason we tend to distrust rhetoric is that it can be used to stir up and embolden the masses. On the other hand rhetoric is committed to justification and explanation in a way that practical wisdom is not. With rhetoric, for instance, the premises, arguments, and conclusions are subject to scrutiny, criticism, and correction, and when the rhetorician commits a logical error, with practice we can recognize it and call him out. Logical fallacies lose a good deal of their persuasive effect if they are called by name. And if a judgment—even a seemingly good judgment—is not supported by good reasons, we will be more likely to question it.

Most judges have had the experience of believing a certain outcome to be correct in a case but being unable to create an argument to justify that outcome. A judge guided only by practical wisdom will be undeterred

and will stick with her original judgment. In contrast, a judge constrained by the ideal of rhetoric will understand that the outcome must be justified in terms of the existing law and precedent and will yield to clear authority. The requirement that judges give public justifications and explanations for their judgments rooted in precedent and tradition places an important constraint upon their exercise of practical wisdom.

Rhetoric renders craft less secretive, deceitful, cunning, and tricky. Rhetoric lays its reasons on the table, where they can be scrutinized, criticized, and evaluated.

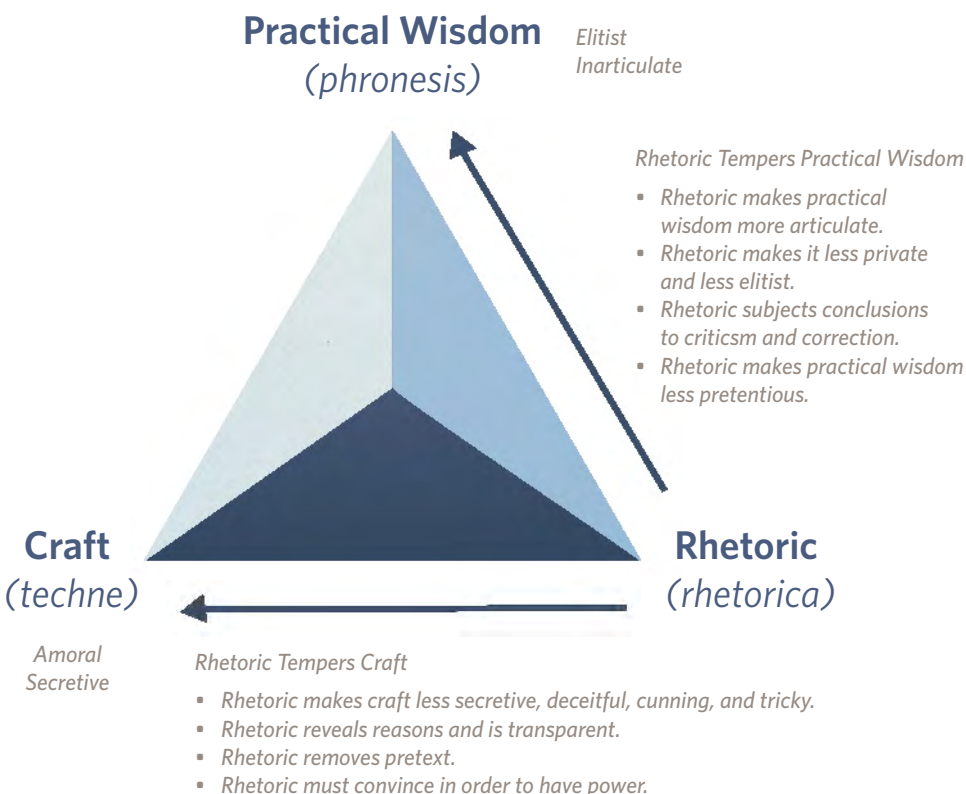
GOOD JUDGMENT

In conclusion, as we approach legal reasoning and judgment, the best choice lies in adopting pluralist approaches. But pluralism need not devolve into its most common variation: a rudderless and ultimately quite cynical pragmatism.

Good judgment, I believe, will be inculcated by developing trustworthiness, the cardinal virtue of practical wisdom; integrity, the cardinal virtue of craftsmanship; and honesty, the cardinal virtue of rhetoric. Practical wisdom, craft, and rhetoric should be developed, employed, and valued together, not only because each will have a tempering effect on the others but because each helps refine and perfect the others. These concepts, together, provide a conceptual map to help us navigate the treacherous terrain of legal reasoning and argumentation. They also hold out the promise that good judgment is something that can be understood and pursued.

Read Professor Scharffs's remarks in their entirety at digitalcommons.law.byu.edu/clarkmemorandum/63.

How Rhetoric Tempers Practical Wisdom and Craft



NOTES

- 1 A special thanks to Thomas Palmer and Benjamin Thornell for their help with references in this article.
- 2 Brett G. Scharffs, "The Character of Legal Reasoning," *Washington and Lee Law Review* 61 (2004): 733–86.
- 3 Twenty-five years after the publication of *After Virtue*, MacIntyre stated in reflection: "What then was I and am I claiming? That from the standpoint of an ongoing way of life informed by and expressed

through Aristotelian concepts it is possible to understand what the predicament of moral modernity is and why the culture of moral modernity lacks the resources to proceed further with its own moral enquiries, so that sterility and frustration are bound to afflict those unable to extricate themselves from those predicaments." (MacIntyre Alasdair, *After Virtue: A Study in Moral Theory*, 3d ed. [Indiana: University of Notre Dame Press, 2007], x.)

- 4 This section is an abbreviated adaptation of Scharffs, "Character of Legal Reasoning."
- 5 Aristotle, *Nicomachean Ethics*, VI.4.1140a7.
- 6 See Thomas F. Lambert Jr., "Recalling the War Crimes Trials of World War II," *Military Law Review* 149 (1995): 19.
- 7 Immanuel Kant, *Critique of Judgment*, trans. J. H. Bernard (London: Macmillan and Co., 1892), sec. 53, 198/328 n. 63.

BY SCOTT W. CAMERON



PATTERN

OF TIMELESS MOMENTS

*A people without history is
not redeemed from time, for history
is a pattern of timeless moments.*

—T. S. ELIOT

“Little Gidding,” Four Quartets

THE J. REUBEN
CLARK LAW
SOCIETY AT 30

The J. Reuben Clark Law Society, an organization for lawyers of faith overseen by the BYU Law School, is now 30 years old. Its anniversary provides us an opportunity to pause and evaluate “a pattern of timeless moments” in the development of what is now a robust organization of more than 15,000 members in 272 student and attorney chapters in 26 countries.

ILLUSTRATIONS BY TRACY WALKER



A PATTERN OF INSPIRATION

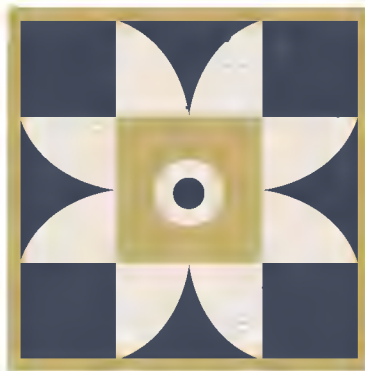
The J. Reuben Clark Law Society was not officially organized until 1988, but its origins can be traced back to 1975. Prior to the Law Society's inception, there was no gathering point to bring LDS lawyers together.¹

In 1975 attorney Ralph Hardy was in the audience for President Marion G. Romney's dedicatory address and dedicatory prayer of the new J. Reuben Clark Law Building. President Romney explained why the J. Reuben Clark Law School was established, why it was an important development, and something of the vision of President J. Reuben Clark Jr.

Hardy recalls, "It was for me an epiphany. . . . Although the idea was not firmly planted in my mind at the time, I gradually began to think about this wider group of Latter-day Saint lawyers and how their association together could be a positive development both in their practice of law and for The Church of Jesus Christ of Latter-day Saints."² Hardy nurtured that idea for more than a decade.

Years later, on a Sunday afternoon in 1987, Hardy met with BYU Law dean Bruce C. Hafen in Washington, DC. He explained his idea for an association of LDS lawyers to Dean Hafen, who agreed that as LDS attorneys joined in support of the Law School and its students, all would be blessed.

In the fall of 1988, a group of 17 lawyers who represented several major regions of the United States formally organized the J. Reuben Clark Law Society. They drafted articles of incorporation and bylaws and decided that the Law Society would be an affiliated organization of Brigham Young University.³



A PATTERN OF LOCAL CHAPTERS

The Law Society started small but quickly began to grow. In 1989 Dean Hafen was appointed provost of the university by BYU president Rex E. Lee, and H. Reese Hansen became dean of the Law School. He filled that position for more than 15 years. Dean Hansen was dedicated in his support of the Law Society, and under his leadership, the Law School administration and staff⁴ prepared a directory of lawyers, connected the *Clark Memorandum*—the official publication of the Law School—to the Law Society,⁵ and set in place a pattern of annual leadership meetings.

The greatest growth of the Law Society, however, was in the creation of local chapters. Within the Law Society's first four years, 15 chapters were established, and they had far-reaching effects. When Tom Sutcliffe was admitted to the bar in New Zealand, he was unaware of any other Latter-day Saint lawyers in the country. Later he discovered that there were several of them scattered around, and they began meeting under the name of the Matthew Cowley Society. When they learned of the J. Reuben Clark Law Society, they became the Matthew Cowley Chapter of the Law Society.

Sutcliffe states: "To discover others was a real blessing, and it has led to enduring friendships. Having an association at a professional level with likeminded individuals whose spiritual perspective is a common denominator is very comforting, [as is the blessing of]



attending devotionals with senior Church leaders, who have addressed and reinforced the necessity of public and private service to our communities, of upholding the rule of law, and of the need for nations to defend the right of religious freedom. [All of these things] have made me feel more comfortable in my own skin as a lawyer and a deeply religious man.”

John Christensen remembers a “small band of ‘pioneer’ attorneys, law students, and professors from Kansas and Missouri meeting at the LDS visitors’ center in Independence, Missouri, to form the Midwest Chapter” on April 16, 1994. A year later, as Dean Hansen spoke at the Midwest Chapter’s annual meeting, he noted the appreciation that had been expressed by lawyers of faith and their spouses from Kansas City, Topeka, Tulsa, and Omaha. The Law Society had helped them overcome feelings of isolation and had encouraged them to make new friends and reach out to colleagues with whom they could discuss ethical dilemmas in the practice of law.⁶

The new Midwest Chapter even passed along an idea for improvement and growth to the Law Society. Because there are 11 law schools within a 260-mile radius of Kansas City, Missouri, the chapter recommended that law students be admitted as “potential members of the Law Society.” As a result, the National Committee amended the bylaws to allow student members.

There are now 272 student and attorney chapters organized under the umbrella of the BYU Law School, all of which have their own founding stories.

**We strive through
public service
and professional
excellence to
promote fairness
and virtue founded
upon the rule of law.**

—BYU J. REUBEN CLARK
LAW SOCIETY
MISSION STATEMENT



A PATTERN OF ASSISTANCE

After the founding of the Law School, the BYU Board of Trustees stayed involved in its unfolding mission and often sought opportunities to speak to students and Law Society members. A personal story about my own interaction with President Dallin H. Oaks of the First Presidency is indicative of Church leaders’ ongoing interest in the Law Society.⁷

In February 1998, President Oaks (then Elder Oaks) was scheduled to speak at the organization of the California Ventura Chapter, and I had been assigned to attend the meeting. The dinner and fireside were to be held on a Friday night. That year Northern California was experiencing near-torrential rains, and upon arriving at the San Francisco airport earlier that Friday, President Oaks and I discovered that our flight to Santa Barbara had been cancelled.

I was waiting in line to determine what to do when President Oaks approached me and indicated that his secretary had found a flight leaving in 50 minutes from the Oakland airport to LAX. We left the line and were marching double-time toward the taxi when President Oaks was stopped by Church members. He interacted with them graciously and then excused himself, and we continued on our way.

Having lived in the Bay Area for some time, I didn’t think it was possible to get to Oakland in a torrential rain storm in 50 minutes. When I mentioned this to President Oaks, he merely responded, “If we are supposed to be there, we will find a way.”

As we entered the Oakland airport, we found out that the flight to LAX was delayed two hours. Then President Oaks was paged on the loud speaker; his secretary had booked a ticket for us on a flight leaving almost immediately for Burbank. We jogged through the airport and onto the plane and sat in two seats on the last row.

We arrived at the venue just before dinner was to be served. President Oaks ate quickly so that he could address the audience. I still remember his remarks regarding how the Savior always answered the right question even when the wrong question had been asked.

Over the years I have observed similar care and concern as the general authorities and general officers of the Church have written, edited, and presented their speeches for Law Society meetings and for publication in the *Clark Memorandum*.

A PATTERN OF COMMUNICATION



The decision by the Law School in 1988 to allow the Law Society to be the joint publisher of the Law School's new magazine, the *Clark Memorandum*, had a marked effect on the publication itself and a positive effect on the Law Society. BYU Publications & Graphics⁸ was recognized at the time as producing some of the finest publications in the industry and has since collaborated with the Law School editorial staff in producing the award-winning magazine.⁹

The level of care that goes into the *Clark Memorandum* is typified in the effort put forth to find an illustration for the article "Humor in Law Teaching" in the spring 1991 issue. The editors and designers decided they wanted a portrait painted of J. Reuben Clark winking. When I initially approached Dean Hansen, he said no. Then he softened and said, "Well, you can go to Provost Hafen and see what he thinks."

Provost Hafen said he would have to see the portrait to decide, so a winking President Clark was painted by Wilson Ong, then a BYU student. It looked exactly like the official portrait of President Clark painted by Alvin Gittins, except for the mischievous wink.

Photographs of both portraits were made and given to Provost Hafen, who said, "I will ask President Lee."

President Lee said, "I am on my way to the NCAA tournament in Salt Lake City, and I will be seated with President Thomas S. Monson. I will ask him for permission."

When President Monson saw the two portraits, he chuckled and said, "I better ask President Gordon B. Hinckley."

When President Hinckley was shown the portraits, he smiled and asked President Monson if he thought the Clark family would be offended. When President Monson said he did not think they would be, President Hinckley replied, "Well, don't say we gave them permission, but if they decide to use the winking portrait, we won't stand in their way."

The *Clark Memorandum* has published poetry, creative nonfiction, book reviews, and articles as diverse as "Humor in Law Teaching"¹⁰ and "Christianity and the Mad Dog Litigator."¹¹ In addition to focusing on the Law School, it has taken on the needs of Law Society members. Many of the Law School events it publicizes and reports on are of interest to members of the Law Society; reciprocally, law students and alumni benefit from the publication of speeches that have been given at Law Society events.



A PATTERN OF CONNECTION

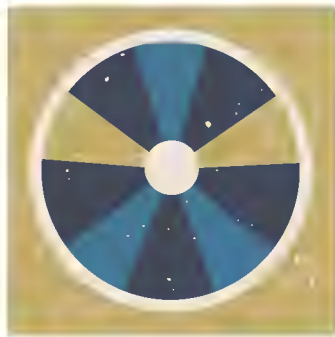
Since its inception, the Law Society has provided opportunities for BYU Law students to meet with attorneys from around the world. While this networking does not always lead to employment, it can lead to valuable friendships.

Bryan Jackson graduated from BYU Law School in 1986 and started his practice in Southern California. He became chair of the Los Angeles Chapter of the Law Society and, through his association with Bill Atkin, associate general counsel for the Church, was asked to become an area legal counsel (ALC) for the Church in the Africa Southeast Area. In the summer of 2016, Jackson attended the Annual Review of Religious Liberty, sponsored by the Law Society. It was there that he met Joe Moxon, '19. Moxon tells this story:

"As an admitted student to BYU, I enjoyed attending as many events as I was invited to, but the one that made the most difference to me was the Annual Review, hosted by the J. Reuben Clark Law Society.

"Admittedly, I missed a few of its sessions, but I certainly never missed any of its free meals. One of these meals was exclusive to admitted students and, as I soon discovered, the Church's area legal counsels. That was where I first met Bryan Jackson.

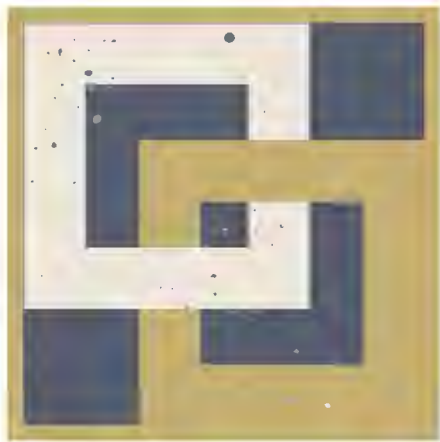
"When Bryan introduced himself as the ALC assigned to Johannesburg, we had an immediate connection. I served my mission in South Africa and naturally had many questions about what he did. He eventually suggested that I might enjoy doing my first-year summer internship with the Office of General Counsel (OGC), but he didn't want me to feel any pressure to apply. All I could think was, 'Are you kidding? That would be a dream!' Though interning for the Church wasn't even a blip on my radar when I sat down for lunch that day, I stood up knowing that I wanted to work with him, and I resolved to make it happen.



“To that end, I volunteered as often as I could with the ICLRS [International Center for Law and Religion Studies] that fall during the Law and Religion Symposium and was reintroduced to Bryan. I was every bit as impressed as I was before by Bryan’s humility, enthusiasm, and kindness and wanted to work with him even more. When it came time to interview with Professor Elizabeth Clark to be a summer OGC intern, she asked me where my top three choices to work would be if I was selected. I responded, ‘South Africa, South Africa, and South Africa.’ I was ecstatic when the offer to go to South Africa came.

“In my first year of law school, I came to realize that what I was most hoping for in an internship that summer was mentorship, and I felt hopeful that I would likely have that in Bryan. But that hope didn’t even begin to cover [my actual experience]. Along with his three incredible associate missionaries and the rest of the office, I received so much more than I bargained for. As my supervisor, Bryan gave me confidence that I would be successful in my career. As a mentor, he exemplified the kind of man I want to be: compassionate, humble, and ‘diligent [yet] temperate in all things.’¹²

“The blessings from meeting Bryan [through the Law Society] have, more than anything else, reinforced my determination to never pass up a free meal.”



A PATTERN OF COOPERATION

In addition to receiving support from Brigham Young University and the Law School, the Law Society has been the recipient of significant assistance from the Church’s Office of General Counsel. Bill Atkin has been a part of the leadership of the Law Society for more than 20 years.¹³

In addition, the ALCS who serve in the OGC under Atkin’s supervision have been responsible for organizing international chapters of the Law Society throughout the world. They participate in the Law Society Annual Leadership Conference and in regional and international conferences, where they are given opportunities to speak about the issues they confront when representing the Church in foreign countries. These reports are often considered to be highlights of the conferences.

One of these reports was given by John Zackrison, who served as international legal counsel¹⁴ in Frankfurt, Germany, and was assigned to prepare the way legally for the building of the Rome Italy Temple. In addition to receiving approval from the departments under the direction of the mayor of Rome, it seemed prudent to ensure that the Roman Catholic Church, headquartered in Rome, would not object to the construction of an LDS temple there.

However, neither Zackrison nor anyone else in the Europe Area knew how to gain an audience with someone in the Vatican who could assist them. As Zackrison was praying about the problem, the name of an attorney in Rome, Emanuele Turco, came to his mind. Turco had represented the Church in the 1970s and 1980s in Italy and had assisted the Church in obtaining the legal status necessary to own real property.

After he resisted calling Turco for several days, Zackrison finally phoned Turco and asked if he could take him to lunch. Turco agreed and then rather off-handedly asked Zackrison if he would like to attend a reception at the Vatican that Turco was scheduled to attend.

At the reception, Turco introduced Zackrison to Cardinal Jean-Louis Tauran, who was head of the Pontifical Council for Interreligious Dialogue, which oversees relations with

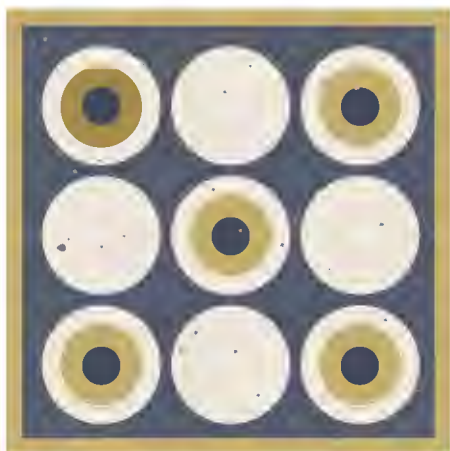
various non-Catholic religions for the Pope. This cardinal was the very person whom Zackrisson needed to contact concerning the temple issue.

Zackrisson obtained an audience with Cardinal Tauran, and Bishop Gérard Caussé, who was then in the Area Presidency of the Europe Area, was assigned to join him. As the audience commenced, it was discovered that Cardinal Tauran and Bishop Caussé were from the same town in France and that they had attended the same high school—although separated by several years. As a result of that audience, the Church was able to construct a temple in Rome without objection from the Roman Catholic Church. It was an answer to prayer.

This pattern of cooperation and support among the Law Society, the BYU Law School, and the Office of General Counsel of the Church has been a blessing.

**To the proud, the
applause of the world
rings in their ears;
to the humble, the
applause of heaven
warms their hearts.¹⁵**

—PRESIDENT EZRA TAFT BENSON



A PATTERN OF LEADERSHIP

The Law Society has been blessed with a strong set of leaders who have distinguished themselves through their service in local chapters, on committees within the Law Society, on the National Committee, and internationally. They have given hundreds of hours to ensure that the Law Society meets the needs of its members.¹⁶

This strong pattern of leadership is demonstrated in the service of Nancy Stevenson Van Slooten, '80. Van Slooten was among the first 17 attorneys who founded the Law Society in 1988; she worked with John Welch to establish the Los Angeles Chapter in 1989 and has worked tirelessly over the years to convince those who have left full-time practice that there is a home for them in the Law Society. Van Slooten served as an active part of the Atlanta Chapter while she took a hiatus from practicing law to raise her children. She returned to the national board of the Law Society in 1998 and in 2007 was asked to be chair-elect of the Law Society. In that role she joined with then international chair Brent Belnap in championing the establishment of the Women in Law Committee and overseeing the change to allow law students to be full members of the Law Society. In 2009 she became the first woman to serve as international chair.¹⁷ Recognizing that being legally trained is a benefit in all walks of life—from parenting to educating to influencing one's community—she has particularly encouraged women to serve.

Nan Barker spoke of her own unique journey within the legal profession and the role the Law Society played in that journey:

"I had the opportunity to attend law school at BYU. It was a surprise since I had never planned on attending either BYU or law school. I loved it. I loved the intense demands law school required. I planned on having an interesting legal career. After my second year I married an attorney [Daniel Barker, '81], moved to Arizona, and finished law school as a visiting student at Arizona State University. After [I had practiced] for a couple of years, our five children began to arrive. At that point, I put my legal training and practice aside. I thought my legal life had ended.

"Then one day, while attending a J. Reuben Clark Law Society event with my husband, the speaker, Bill Atkin, asked me to get involved with the Law Society. I had almost no interest—after all, I really wasn't a lawyer anymore. But he persisted and I agreed. Bill had asked me to start a Women in Law section within the Phoenix Chapter of the Law Society. I was scared. Who would listen to me—a woman who hadn't practiced in 20 years? Well, I was wrong.

"I can't express to you how much the Law Society has enriched my life. It helped me to realize for myself that, as President Dallin H. Oaks has said, 'Most of us will conclude our formal activity in the legal profession before we die. But the skills and ways of thinking we have acquired as lawyers will remain—for better or for worse. And when properly applied, those skills and ways will still be a source of blessing to many.'¹⁸

"Working with the Phoenix Women in Law group led me to serve with the International Women in Law Committee. I truly came to not only believe but *know* that whatever path a woman's legal training takes her down, it is what is right for her. The Law Society helped me recognize and use skills I thought were long gone. It helped me feel part of an organization that is filled with good and caring people. It changed and enriched me in the most amazing ways!"

A PATTERN OF TIMELESS MOMENTS

T. S. Eliot's observation that "history is a pattern of timeless moments" seems to hold true for the J. Reuben Clark Law Society. After 30 years it has made a creditable start in becoming an organization worthy of that initial inspiration. It has blessed the lives of more than 15,000 lawyers of faith and their families by providing new friends, colleague connections, concrete advice, and enjoyable gatherings. This vibrant organization stays abreast of the changing needs of the Law School and its members and is becoming increasingly international in focus. Over the years the Law Society has not strayed from the fundamentals upon which it was organized; rather, it has magnified those ideals and found additional ways to encourage honesty, integrity, and service.



In 1973, during his address at the opening ceremony of the J. Reuben Clark Law School, President Romney expressed his vision that at BYU Law “[the] laws of . . . man’ [would be taught] in the light of the ‘laws of God.’”¹⁹ In 1987 President James E. Faust echoed President Romney’s idea and enlarged it with the hope that both “the study and practice of the laws of man” would take place “in light of the laws of God.”²⁰ The Law Society has endeavored to exemplify those ideals. The past 30 years of structural additions and refinements have strengthened the Law Society and made it more viable. These improvements have come through the service rendered by countless members at every level of the Law Society.²¹

Insofar as we as individuals embrace the Law Society’s goals and continue to build upon its founding patterns, we may become lawyers who embody the Law Society’s mission statement: “We strive through public service and professional excellence to promote fairness and virtue founded upon the rule of law.”

Scott Cameron served as the executive director of the J. Reuben Clark Law Society and an editor of the *Clark Memorandum* from 1989 to 2013. His close association with the Law Society has allowed him to observe the unfolding of these timeless moments.

NOTES

1 Groups of LDS lawyers had been meeting on an ad hoc basis in Seattle and Atlanta and perhaps elsewhere, and LDS law students at Columbia University, J. Reuben Clark’s alma mater, were organized under his name, but there were no formal LDS attorney associations.

2 Interview with Ralph W. Hardy Jr., recorded Feb. 12, 2010, at the J. Reuben Clark Law Society Annual Conference in Salt Lake City, Utah. Jamie Askar and Joseph Bentley conducted the interview and prepared the transcription for the JRCLS History Committee.

3 In this initial meeting, the National Committee decided upon a three-pronged program to launch the Law Society: (1) identify lawyers and contact them; (2) prepare materials to introduce the Law Society, create a directory of contact information and areas of practice of each member, and jointly with the Law School publish the *Clark Memorandum* to unite the Law Society; and (3) develop a template to be used in organizing the local chapters.

4 This staff included Claude Zobell, Hal Visick, Katherine Pullins, Scott Cameron, Peter Mueller, Vance Everett, Gary Buckway, Mary Hoagland, Eileen Crane, Robin Shumway, Roberta Lawler, Tonya Fischio, Matt Imbler, and others who worked to fulfill the vision set by Ralph Hardy and Dean Hafen.

5 The *CM* has more than 50 published issues, allowing Law Society members to review scholarly work, articles on life and the law, and important speeches delivered to the Law Society and the Law School.

6 In a July 2017 interview by Jill Jaspersen of the History Committee, Dean Hansen referred to this event and a similar event at the Hyde Park Chapel in

London, at which attorneys from throughout Great Britain and Ireland had gathered to form a chapter of the Law Society. Dean Hansen commented, “It was impossible to participate in such events without sensing that the Law Society was very important in people’s lives.”

7 Elder Neal A. Maxwell was commissioner of education for the Church when the Law School was established, and he spoke twice to the Law Society. Elder Marion D. Hanks was on the BYU Board of Trustees, and he also spoke twice. President Dallin H. Oaks has spoken to more chapters and at more conferences than any other general authority.

8 Those from the BYU Department of Publications & Graphics warranting special thanks are Charles Cranney, Linda Sullivan, John Snyder, Bruce Patrick, Judy Garvin, Joyce Janetski, David Eliason, Bradley Slade, and Lena Harper. Jane Wise of the Law School, who served as associate editor and editor for 15 years, deserves significant praise, as do Katherine Pullins, Mary Hoagland, Lovisa Lyman, and Constance Lundberg.

9 The Council for the Advancement and Support of Education (CASE) has awarded the *Clark Memorandum* several medals “for its creative design, excellent use of resources, and substantive content.” The magazine was also deemed “the finest publication of its kind in the nation” and has received awards from the Society of Publication Designers and the Salt Lake City Chapter of the American Institute of Graphic Arts (AIGA).

10 Jim Gordon is responsible for one of the most famous lines in the publication: “Law school has been compared to one of those movies in which

somebody wearing a hockey mask terrorizes people at a summer camp and slowly and carefully slashes them all to pieces. Except it’s worse, because the professors don’t wear hockey masks, and you have to look directly at their faces” (“Humor in Law Teaching,” *Clark Memorandum*, Spring 1991, 4).

11 Judge David Campbell did not let litigators off the hook when he opined, “When it comes to personal relations with others in the litigation process, there is nothing . . . that requires a lawyer to act like a jerk” (“Christianity and the Mad Dog Litigator,” *Clark Memorandum*, Spring 1991, 33).

12 Alma 38:10.

13 Bill Atkin served as international chair from 2001 to 2003 and on the Executive Committee until 2017, when his position representing the OGC was taken over by David Channer.

14 These positions are now area legal counsels.

15 Ezra Taft Benson, “Cleansing the Inner Vessel,” *Ensign*, May 1986.

16 The international chairs of the Law Society: Ralph Hardy (1988–92); Gary Anderson (1992–95); Charles E. “Bud” Jones (1995–97); Ralph Mabey (1997–99); Marshall Tanner (1999–2001); Bill Atkin (2001–03); Lew Cramer (2003–05); Joseph Bentley (2005–07); Brent Belnap (2007–09); Nancy Stevenson Van Slooten (2009–11); Doug Bush (2011–13); Jeremiah Morgan (2013–15); Ginny Isaacson (2015–17); Steve West (2017–present). Each international chair has reflected the same pattern while employing their individual talents to the task of leadership.

17 The international chair serves as the head of the J. Reuben Clark Law Society.

18 See Dallin H. Oaks, “The Beginning and the End of a Lawyer,” JRCLS Law Society Annual Fireside address, Salt Lake City, Utah, Feb. 11, 2005; see also Oaks, “The Beginning and the End of a Lawyer,” *Clark Memorandum*, Spring 2005, 11.

19 Marion G. Romney in *Addresses at the Ceremony Opening the J. Reuben Clark Law School*, Aug. 27, 1973, 20; quoting D&C 93:53.

20 James E. Faust, “The Study and Practice of the Laws of Men in Light of the Laws of God,” *Clark Memorandum*, Fall 1988, 18.

21 It is essential that an article prepared for lawyers should end with a caveat. While there have been individuals whose names have been mentioned in this short article, it has not been possible to name all those who are deserving of mention. I offer my apology to all those who are in this category. I trust that each will know of his or her sacrifice and be warmed by the knowledge that, but for their efforts, the Law Society would not be the strong organization that it has become.



Since I first learned how, I have loved to talk. Marilyn and Denise, my two older sisters, used to set the kitchen timer for five minutes, challenging me to go that long without saying a word. I never once made it the whole five minutes. Talking in the kitchen to your siblings, however, is very different from talking in this concert hall to a large and diverse audience. Accordingly, I am both excited and humbled by this opportunity to speak to you. But I want this experience to be much more than just my talking to you. I want this experience to be one in which the Spirit teaches and edifies, and I appreciate the music and the prayer that have helped set the tone for this to take place.

In addition to loving to talk—and in part because I love to talk—I love being a lawyer. As a junior in high school, I decided I wanted to be a lawyer for two reasons: First, I wanted to be different by going into a challenging profession in which not many women were employed—this was in the mid-seventies, when less than 20 percent of the attorneys in America were women.¹ Second, I wanted to be rich. I didn't have any clearly formed ideas of what I would do with the money I made, but in my small hometown of Brownfield, Texas, having a swimming pool in your backyard was a pretty big deal, and I think that was my primary aspiration at the time.

As I found out more about being a lawyer, I learned of two outstanding attorneys: Rex E. Lee and Dallin H. Oaks. They were faithful members of the Church, and they had achieved very visible levels of professional excellence. They became my ideals. My choice of a major as a freshman at BYU was simplified when I discovered that they had both been accounting majors, so accounting was my choice as well.

I was in heaven when I discovered that two of then BYU president Dallin Oaks's sons not only were in my BYU ward but were assigned to my family home evening group. I had visions of dazzling them and finding myself a member of President Oaks's inner circle. However, my Texas twang dashed these hopes. Upon learning I had an academic scholarship, one of my freshman friends informed me that I must be a lot

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ADVOCACY AND LOVE

smarter than I sounded. I accepted that I was not going to dazzle anyone, and I am still waiting for an entrée to President Oaks's inner circle. Nevertheless, I held on to my desire to emulate him by studying the law, and I absorbed the content, organization, and cadence of his talks.

I was likewise thrilled my freshman year to be invited to a lunch hosted by none other than Rex E. Lee, who was then dean of the still new J. Reuben Clark Law School. It was a privilege to meet him, and I still remember his infectious smile and how he made me feel important. He encouraged me to study law and helped me begin to see the powerful advantages a legal education had to offer—advantages that went beyond proving myself in a challenging profession and getting rich.

One of these advantages became very compelling during my junior year of college. A well-known talk show host taped a show in Utah. He picked a controversial topic—one many people of faith would feel strongly about on moral grounds. When asked questions about why they objected to the position he took, however, many members of the audience were not able to clearly articulate their objections, even though very valid objections existed. As a result of hearing about these exchanges, I became even more committed to studying law so that I would be able to articulately and persuasively defend my positions on controversial topics.

Following my graduation from BYU—and despite having received an accounting job offer that could have satisfied my original two goals—I began my studies at J. Reuben Clark Law School. For me, law school was a fun, exciting, and meaningful experience from start to finish. I learned to think in new ways, and I met people who remain beloved friends to this day. I also discovered and refined my true passion: advocacy. For me it was not enough to defend a position and to be thought reasonable; my highs came when I persuaded someone to think about an issue or another person in a way they had not before.

It is on being an advocate that I want to focus today. I want to encourage your advocacy in public settings, advocacy that is directed toward authority figures, legal systems, and institutions. But I also want to encourage your advocacy in less visible ways.

Let me show you a picture (at left) of my two older sisters, Marilyn and Denise (yes, the ones who would later set the kitchen timer), and me. If you look closely at the picture, you will notice that my collar was pulled up a little. This is because I was still a little wobbly when it came to sitting up by myself, so my sisters were holding on to the back of my dress to keep me from falling. I have been the beneficiary of behind-the-scenes advocacy my entire life. It has been provided by family, friends, and professional associates in ways too numerous to mention. Today it is evidenced by the fact that my husband, my 81-year-old mother, five of my six siblings (the missing sibling is with the U.S. State Department in Egypt and wishes he could be here), my brothers- and sisters-in-law, and several of my nieces and nephews have traveled approximately 15,000 combined miles to support me

in person. If you take nothing else away from my remarks, please think about those who advocate for your success in less visible ways and express your gratitude to them.

Now, in what I hope is true President Oaks fashion, I want to discuss three points about being an advocate: first, recognize that we are all called to be advocates; second, determine some key elements of what being an effective advocate means; and third, contemplate for whom and what we should advocate. I will then share some examples to illustrate these points.

CALLED TO BE ADVOCATES

We are advocates because Jesus Christ, our perfect Exemplar, is an advocate. In this dispensation He described Himself as an advocate on at least five occasions,² and prophets in other dispensations have also testified of this key role He plays.³ He has given us the instruction “For that which ye have seen me do even that shall ye do,”⁴ so as we are striving to emulate our Savior—to do what He does—we should be advocates. He has placed people in your life



whom you are called to love and whose circumstances you are called to support or change. Both will require your advocacy.

While a law degree is not required to be an advocate—although it certainly does help develop that ability—I believe the major drop in the number of students enrolling in law school is evidence that our society places less value on advocacy than it has in the past. As I read articles, follow social media threads, and engage in conversations, I find that those who disparage seem to far outnumber those who advocate. We need to change this imbalance by playing the role of advocate more and the role of critic less. Remember, Christ is our example, so civility must be paramount. There is no room for mocking, labeling, bullying, or belittling.

Being an advocate takes more skill and work than being a critic does. I have spent decades observing other advocates and trying to refine my own abilities as an advocate. Based on this, I would like to share a few key aspects of effective advocacy that I have come to value and that may help you increase the effectiveness of your own advocacy. These principles apply both in and out of the courtroom, and while they are often used in adversarial situations, they also apply when no direct conflict exists.

APPEAL TO AUTHORITY

Effective advocates present their case to the party who has authority to grant the relief sought. In lay terms, this means you should focus on persuading people who actually have the power to do what you ask. The Savior exemplifies this by being our Advocate with the Father; the Savior's pleading on our behalf is directed toward the ultimate Decision Maker. In the book *Making Your Case* by Antonin Scalia, a recently deceased justice on the United States Supreme Court, and Bryan A. Garner, the authors observed:

Nothing is accomplished by trying to persuade someone who lacks the authority to do what you're asking—whether it's a hotel clerk with no discretion to adjust your bill or a receptionist who cannot bind the company to the contract you propose. Persuasion directed to an inappropriate audience is ineffective.⁵

Too often I see energy expended on actions that are at best preaching to the choir and at worst throwing gasoline on a fire. Facebook posts read by an audience with no more power to effect change than the writer has are not effective advocacy. While rallying others to your cause is sometimes an important part of advocacy, do not be distracted by thinking that this is your end goal. Whether working to help an individual do something she could not do for herself, promoting a cause, or changing an existing policy, effective advocates direct their energies toward those who have the authority to either finish the job or carry it to the next level.

BE KNOWLEDGEABLE

Effective advocates are knowledgeable. Passionate support can be part of the equation, but passion without knowledge carries little weight. As an in-house attorney for Motorola, I often participated in selecting what we referred to as “outside counsel” to represent the company in high-stakes matters. We were very focused on choosing attorneys who knew the law exceptionally well in the area of concern, whether that area be litigating intellectual property rights, complying with environmental regulations, or investigating an alleged antitrust violation. In this way we could be confident that they had credibility with the decision maker. In addition, they would have the power to plead our case in the best possible light, advise us about the areas in which our position was weak, and help us strengthen our position.

Outside the legal field, I likewise repeatedly see the value of in-depth knowledge. For example, our daughter Mandi graduated from college with an emphasis in special education—long before she knew she would be the mother of two children with special needs. She has drawn on her formal education and has supplemented that knowledge with informal learning in order to become a powerful advocate for her own children and for other children with special needs. I have marveled as I have watched her advocate on their behalf for services and opportunities, and I have watched our grandchildren's potential blossom as a result.

Gayla M. Sorenson, assistant dean of external relations for the BYU Law School, delivered this devotional address to the university on August 8, 2017.



EARN TRUST

In persuading the person with power, substantive knowledge is important. However, I have often observed situations in which the point was not carried by the most intelligent attorney in the room but by the attorney who had gained the trust of those who needed to be persuaded. This characteristic was highlighted by Scalia and Garner, who noted that there is a “human proclivity to be more receptive to argument from a person who is both trusted and liked.”⁶

Moreover, while a general reputation as trustworthy is valuable, to be an effective advocate you must specifically earn the trust of those whom you are seeking to persuade. Trust must be earned, and it is not easily given. In too many cases I see individuals spend their energy insulting and criticizing from afar those who disagree with them rather than working to earn their trust. How can you earn someone’s trust?

One way to earn the trust of those you are seeking to persuade is to get to know them. In a 2010 editorial in the *New York Times*, Senator Evan Bayh reflected on the changes that had occurred in Washington, DC, since the time his father had served as a senator from Indiana. He recounted:

*When I was a boy, members of Congress from both parties, along with their families, would routinely visit our home for dinner or the holidays. This type of social interaction hardly ever happens today, and we are the poorer for it. It is much harder to demonize someone when you know his family or have visited his home.*⁷

Or as the beloved but fictional attorney Atticus Finch put it, “You never really understand a person until you consider things from his point of view— . . . until you climb into his skin and walk around in it.”⁸ Dialogue is enhanced and understanding is increased when underlying relationships are strengthened.

Another key way to earn trust is to be respectful. Rex Lee exemplified effective advocacy, and, as described by his son, he analogized effective advocacy to having “a conversation about an important topic with a friend—not just any friend, but one that is respected and looked up to.”⁹ Showing respect is of critical importance when dealing with those who have the ultimate authority to grant your request, but it can be of equal importance in dealing with those who have different points of view.

ACKNOWLEDGE THE OPPOSING VIEW

A final key way to gain trust is to acknowledge the strengths of the opposing point of view. Good advocates do not try to defend the indefensible.¹⁰ When the other side has valid arguments, Scalia and Garner advised:

*Boldly proclaim your acceptance of them—thereby demonstrating your fairness, your generosity, and your confidence in the strength of your case, and burnishing your image as an eminently reasonable advocate.*¹¹

Effective advocates can still ably represent their client’s strengths while conceding that the other point of view is not entirely devoid of merit, and their credibility is significantly enhanced as a result.

FOR WHOM AND WHAT TO ADVOCATE

I hope that I have persuaded you to be an advocate and that you are realizing you have the ability to become a powerful advocate, especially if you come to law school! However, you may well be wondering for whom and for what you should advocate. As much as it pains me to admit, I cannot answer this question for you. However, I can share two guiding principles.

First, never forget that you are advocating for individual children of God. It is easy to become so caught up in the larger cause that we forget the individuals for whom we are advocating. Lani Guinier is a well-known civil rights attorney who became the first tenured

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professor at Harvard Law School who was a woman of color. In her memoirs she observed with regret that as the civil rights movement unfolded, she and her fellow advocates became so caught up in “developing legal doctrine and establishing legal precedent”¹² that they “distanced [themselves] from the very people on whose behalf [they had] brought the cases in the first place.”¹³

Constant reminders are necessary to avoid this pitfall. Elder Oaks has represented and led large institutions, and he keeps the picture *Forgotten Man*, by Maynard Dixon, in his office as a constant reminder of the importance of the individual.

The fundamental reminder, of course, is the example of our Savior. His advocacy is provided on an individual basis. For example, the Savior told the Prophet Joseph and a small group of elders, “Lift up your hearts and be glad, for I am in your midst, and am *your* advocate with the Father.”¹⁴ He told Parley P. Pratt, Oliver Cowdery, Peter Whitmer Jr., and Ziba Peterson that He was “*their* advocate with the Father.”¹⁵ He is an advocate, not in some abstract, theoretical sense but on a very personal and individualized basis.

Second, be willing to accept the clients God sends your way, no matter how imperfect they may be. This I am sure about: they will come—inconveniently, surprisingly, and interruptingly, but they will come. As the Savior stated in His great Intercessory Prayer, “I pray . . . for them *which thou hast given me*.”¹⁶

Let me illustrate how this has worked in my life. At one point in my career I did volunteer work in the juvenile courts. I was serving as a court-appointed attorney, which means I represented anyone the court gave me to represent. Sometimes I found my clients easy to advocate for right from the start; other times, not so much. I had committed to accept those court appointments, however, and in every case I found it easier to advocate for my clients after I had truly gotten to know them and their stories.

In like manner, God has given me a family comprising unique individuals. He has given me visiting teachers and young women. And He has given me hundreds of applicants to BYU Law. Some of these clients have been easy to advocate for right from the

start; others, not so much. However, there has never been a case in which I did not find it easier to advocate for these individuals after I had truly gotten to know them and their stories.

God does not give us perfect clients, but, thankfully, our Savior does not advocate for us because we are perfect but rather because He “knoweth the weakness of man.”¹⁷ As you seek to answer the specifics of “who?” for yourself, start with those people God places in your life.

God will also prepare you for what you should advocate for. As Eva M. Witesman recently pointed out in her devotional remarks:

*God knows you, and even though you may not yet know His plans, He knows the end from the beginning. He is preparing and qualifying you for the work He wants you to do.*¹⁸

You may end up advocating on behalf of disabled children or displaced families or individuals whose civil rights have been violated or elderly grandparents who need care. When God sends a client your way, He will have provided you with the opportunity to prepare to advocate for what your client truly needs. And when we are unsure what to advocate for, we can again take instruction from the example of Jesus Christ. As our Advocate, He pleads with the Father that we will be kept from evil, that we will develop unity, and that we will know we are loved.¹⁹ We will never go wrong when we advocate for these results.

EXAMPLES OF ADVOCACY

To illustrate these principles, I would like to share two examples of advocacy from the scriptures.

In the book of Numbers we find the account of the five daughters of Zelophehad.²⁰ Their father had died, and they had no brothers. Under the existing inheritance laws, they would not receive any of their father’s land because they were women. But they did not sit around and complain to each other, nor did they simply whine about this injustice to their neighbors. Instead, they pled their case before Moses—someone in authority who had the power to grant their request. They were knowledgeable about the applicable laws, pointing out to Moses that their father had not violated any of the laws that would have required a forfeiture of the land and noting that the effect of the current law would result in their father’s name being “done away from among his family.”²¹ Acknowledging the concerns of others about preserving tribal lands, they agreed to marry within their own tribe.

Moses was persuaded by their effective advocacy, and the result was a change in the inheritance laws, benefiting not only these women but future generations of Jewish women who might otherwise have seen their families’ lands go to more distant relatives.

In the Book of Mormon the missionary Ammon became part of the household of King Lamoni and his unfortunately nameless wife, simply referred to as “the queen,” who was the star advocate of this story.²² Upon being taught the wonders of the Savior’s Atonement by Ammon, Lamoni fell to the earth “as if he were dead.”²³ He continued in this state for two days and two nights, and a great deal of lamenting took place.

After this length of time, certain members of King Lamoni’s constituency decided it was time “to take his body and lay it in a sepulchre.”²⁴ Fortunately, the queen recognized it was time to advocate for her husband. She realized Ammon had the power to help her husband, and she called for him. She showed Ammon respect by acknowledging that he was a prophet and could do mighty works in the name of God. She gained credibility by acknowledging the opposing point of view, but she also skillfully made the best of her client’s position when she stated, “Others say that he is dead and that he stinketh, and that he ought to be placed in the sepulchre; but as for myself, to me he doth not stink.”²⁵



Her advocacy was effective; Ammon responded to her request to examine Lamoni, and he promised that on the next day the king would rise again. The queen did not have a perfect client—to some people he literally stunk—but she was his advocate, and Lamoni was not buried alive.

In closing, I want to share a poignant example of advocacy from my own life. I did not get married until I was forty-six years old. I had reached the age when I thought that if I ever did get married, it would be a marriage of convenience—to someone I was comfortable with, nothing more, nothing less. Some close friends—Lois Jean Spencer, who is here today, and Marcie Lenio—introduced me to one of their other close friends who was a widower: Ferril Sorenson, a kind, faithful, wonderful man. They advocated for him with me and for me with him, and they were very effective advocates! We fell in love with each other—an all-encompassing love, nothing “convenient” about it.

We got married, and, as I continue to say, life became much better, but it did not become easier. I was working outside Philadelphia and Ferril was working outside San Francisco. Commuting coast to coast; merging two households; realizing I was no longer the only one whose opinion mattered with respect to setting the thermostat; figuring out my roles as wife, mother, and grandmother; and so forth was fun but demanding.

Ferril’s youngest son, Travis, was still living at home, but he was planning to move out a couple of months after we got married, so I set my expectations accordingly. I was fond of Travis, but going from living alone to living with a husband was enough of an adjustment, and I didn’t really have the desire or the energy to adjust to living with a 21-year-old male at the same time.

Travis left in June as anticipated, and I wished him well while feeling a little more like the home in California was now *my* home. Then, in late August, Ferril let me know that because of some unfortunate circumstances, Travis was moving back in with us.

I was not happy about this at all, so I called my parents, expecting their complete sympathy. I explained the situation to them and how inconvenient it was going to be for me, how unfair this was when I was trying to adjust to married life, and how this would impinge on my precious time with Ferril. Clearly this was all about me.

The response I got from my parents was not sympathetic consolation. They became zealous advocates for Travis. They knew I had the power to make Travis’s return positive or negative, so they advocated for the positive approach. They had gained my trust through years of interactions, so I was favorably inclined to hear what they had to say. They conceded there was some merit to my position (not much, but some)—acknowledging that this might not be the most convenient situation for me—but they focused on helping me see Travis in a different light. They pointed out how difficult this must be for him, how he probably wasn’t any more excited about moving back in than I was, and how he was having to adjust to having a stepmother while still intensely missing his own mom. They helped me see how important it was that Travis feel loved.

Because of their advocacy, I genuinely welcomed Travis back into our home. I am sure I didn’t always show love to him perfectly, but I was much more loving than I would have been without my parents’ advocacy on his behalf. His living with us for the next year and a half became a great blessing in my life, and the love we share now is priceless to me.

God will guide us as we develop our advocacy skills, and He will provide us with opportunities to be advocates for His children. He will place some of us in situations to advocate to the highest legal authority in the land for changes that will benefit His children for generations. He will place others of us in situations where we can persuasively declare on behalf of one of our brothers or sisters, “To me he doth not stink.” And I can virtually guarantee that He will enable each of us to advocate for one another within our families. Whatever the specific realm we may be advocating in, if we promote unity and invite others to love one another, we can be sure we are advocating in a way that is pleasing to Him.

I testify of these principles in the name of our Savior, Jesus Christ, our Advocate with the Father, amen.

NOTES

- 1 See U.S. Equal Employment Opportunity Commission, *Diversity in Law Firms* (Washington, DC: EEOC, 2003), 8.
- 2 See D&C 29:5; 32:3; 45:3; 62:1; 110:4.
- 3 See Hebrews 7:25, 9:24; 1 John 2:1; 2 Nephi 2:9; Mosiah 15:8; Moroni 7:28.
- 4 3 Nephi 27:21.
- 5 Antonin Scalia and Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* (St. Paul, Minnesota: Thomson/West, 2008), 3.
- 6 Scalia and Garner, *Making Your Case*, xxiii.
- 7 Evan Bayh, “Why I’m Leaving the Senate,” *New York Times*, Opinion Pages, 20 February 2010, nytimes.com/2010/02/21/opinion/21bayh.html.
- 8 Harper Lee, *To Kill a Mockingbird* (New York: Warner Books, 1982), 30.
- 9 Thomas Rex Lee, “Tribute to the Honorable Rex E. Lee Solicitor General of the United States 1981–85,” *Journal of Appellate Practice and Process* 3, no. 2 (Fall 2001): 559.
- 10 See Scalia and Garner, *Making Your Case*, 20.
- 11 Scalia and Garner, *Making Your Case*, 21.
- 12 Lani Guinier, *Lift Every Voice: Turning a Civil Rights Setback into a New Vision of Social Justice* (New York: Simon and Schuster, 1998), 222; quoted in Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012), 225.
- 13 Guinier, *Lift Every Voice*, 221; quoted in Alexander, *The New Jim Crow*, 226.
- 14 D&C 29:5; emphasis added.
- 15 D&C 32:3; emphasis added.
- 16 John 17:9; emphasis added.
- 17 D&C 62:1.
- 18 Eva M. Witesman, “Women and Education: ‘A Future Only God Could See for You,’” BYU devotional address, 27 June 2017.
- 19 See John 17:15, 21, 23.
- 20 See Numbers 27:1–11; see also chapter 36.
- 21 Numbers 27:4.
- 22 See Alma 17–19.
- 23 Alma 18:43.
- 24 Alma 19:1.
- 25 Alma 19:5.

ART CREDITS

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Paths and Connections

Nizhone Meza is a BYU Law School alumna, a wife, a mother of six children, a member of the Navajo Nation, and an advocate in the nonprofit sector. The Clark Memorandum recently sat down with her to learn more about the path that led her to the BYU Law School, her experience at BYU Law, and how her law degree has shaped her life.

Nizhone Meza's path to law school began when she was getting a master's degree in social work. During an internship with the Division of Child and Family Services, she remembers sitting in a courtroom as parents made their cases to prevent their children's removal or to regain custody. Meza noticed that it was most often the attorney, not the social worker, who handled the advocacy in these cases, and she began to understand

the importance of the law and the legal process, especially in advocating for those who either did not understand the process or did not have the skills to advocate for themselves.

As a result, Meza realized she wanted to study law. But the timing was not quite right, so after completing her master's degree, she took a job with a social services agency doing adoption work. As she interacted with birth mothers and adoptive parents, Meza

again felt the desire to obtain a law degree. But the timing still wasn't right.

A few years later, while teaching elementary and middle school in Utah, Meza became the Title VII Indian education coordinator for the district. She recalls one particular Indian education meeting in which other coordinators stressed the "need for our Native youth to believe in themselves and live up to what they're capable of so they can help our tribal

"One thing I really loved about my commute to BYU every day was coming down the hill into the Heber Valley and seeing the mists over the Deer Creek Reservoir rising up on Timpanogos. It filled my soul to where I felt that I could do whatever it was that I needed to do. Law school was hard, as anybody who's gone through law school can tell you. But those sights, those connections, those feelings driving through the canyon, . . . the leaves as they change . . . —just being able to see it on a daily basis really filled my spirit."

—NIZHONE MEZA

communities and tribal nations succeed.” Meza says, “We talked about the strength in our culture, the strength in our resilience, the strength in our families and in our indigenous ties. When I heard these things, I thought about my dream of going to law school, and I knew I needed to do something about it.”

Becoming an Advocate

So she did. Meza applied for and was accepted to the BYU Law School. Because she had a two-year-old daughter when she began her studies, attending BYU felt like the right place to be. “I knew I would be cared about as an individual,” she says. “I don’t want to say that another law school wouldn’t have been responsive to that, but I did know what BYU was about, and I did know that about half of the students in my class were married and there were many who had children. That gave me comfort when I was making my decision.” She also appreciated the learning environment: “[BYU has] a feeling there that I didn’t necessarily feel elsewhere,” she says.

As Meza considered an area of focus during her first year, she knew she needed to work in places that affected tribal communities, but she resisted those thoughts. So rather than initially heading down one specific path in law school, she told herself, “Just learn to become the best lawyer [you] can.” Still, law school was challenging, as she spent the long days being a law student, wife, and mother with a one-hour commute each way between school and home. What kept her going, she says, “was knowing that whatever I was going to do was going to serve [my family] and that I would try to serve my people.”

During Meza’s 2L year, she ran into a former peer from her undergraduate days, Paul Tsosie, who was a BYU Law alum. Although she had no intention of searching out an externship, she jokingly asked him if he had work for her. Tsosie, who provides counsel for various Utah tribes, answered that he did, and Meza was given an opportunity to work on tribal issues. On one trip to a nearby reservation for a tribal council meeting, Meza was reminded “of going to my tribe back home, being amongst our tribal elders. My grandfather was a medicine man. My grandmother served with the archives. The feelings that I would get listening to the elders and tribal council members on the reservation as they spoke not only reminded me of my grandparents but also gave me hope that I could actually serve tribal communities such as mine doing things of a legal nature.”

Later in law school Meza worked for the BYU Office of General Counsel, and she gained experience that became invaluable when she later became a legal fellow for a Utah nonprofit organization. She also took a research assistant position with Professor Lisa Sun. “She’s genuine, kind, and smart,” Meza says. “I felt that the ability to talk with professors and to be able to learn from them was amazing. I could go through the names of so many professors and tell you what kind of difference they made.”

Connecting Two Worlds

Law school forced Meza to draw more connections between her experiences and background. “I grew up in two worlds and never really belonged to either,” she says. “I understand the traditional way of thinking, but my

strengths are the Western way of thinking because that is the world I operate in 90 percent of the time.” In her property class as a 1L, she came to see how important and influential the other 10 percent of her life was because she viewed property rights differently than her classmates. Consequently, Meza is quick to acknowledge the help of her family, friends, and colleagues in her journey but is especially grateful for her heritage. She says, “I keep looking back to my ancestors and my grandparents and the work that they did and the teachings that they passed on. I still look up to them, even though they’re not here with me anymore. I look up to my grandmother for her work in teaching and preserving our Native language; she wasn’t afraid to stand up and speak her mind. For me, she’s been a hero.”

After graduation Meza received a BYU Law fellowship to work with a nonprofit organization. She was able to explain to state leaders how a tribal organization’s position was based on traditional Native beliefs and why they held the positions they did. Meza’s advocacy lies in bringing together two worlds and giving a voice to those without a voice.

Meza’s advice to current law students, prospective law students, and attorneys who are interested in pursuing a career working with tribes or advocacy groups involves being culturally sensitive and understanding tribal sovereignty. She emphasizes the need to not only understand the issues that impact Native Americans but to try to get to know them as individuals and learn to see things from their point of view. “My view comes from my experience, and I am open to seeing someone

else’s view,” Meza says. “I do know where I stand, but I try not to be so confident or arrogant as to think I know it all. I think it’s important that people approach work with tribes with a mindset of being willing to learn and work with people.”

Advocacy is important to Meza, especially advocacy for her heritage. She is particularly passionate about the need for tribal environmental advocacy groups to bring harmony to the two worldviews. “There are 567 federally recognized tribes in the United States. Our ancestral lands contain our sacred spaces. They contain remnants of who we were and who we are. These lands are important for individual, mental, spiritual, and emotional wellness. We look for harmony. Tribal members are connected to their ancestral lands; we still do ceremonies in those places,” she says. “I never liked studying history, because it was so painful. There are so many events in history where people have let emotion drive decisions instead of thinking of what’s truly best in the holistic sense. We should be focused on actions that bring harmony to people and the earth, and in some situations that begins with actions that promote healing. We should be doing our part to take care of ecological wellness, and then Mother Earth will do what she needs to do to protect herself.”

When asking Esther to advocate for her people before the king, Mordecai said to her, “And who knoweth whether thou art come to the kingdom for such a time as this?” (Esther 4:14). Like Esther, Meza has taken a path that connects two worlds as she serves her communities and creates dialogue and opportunities for holistic solutions.



Gayla Moss Sorenson



Stacie A. Stewart



K. Marie Kulbeth



Rebecca Walker Clarke

PHOTOS BY BRADLEY SLADE

A P P O I N T M E N T S A N D

Assistant Dean of External Relations

Gayla Moss Sorenson, '85, has been selected as the new assistant dean of external relations, a position focused on strengthening BYU Law students, alumni, and J. Reuben Clark Law Society (JRCLS) members. Dean Sorenson is best known to current BYU Law students and recent alumni for her role as the Law School's assistant dean of admissions.

"The opportunity to work at BYU Law has been an incredible capstone to a meaningful, fulfilling career," Dean Sorenson shares. "As dean of admissions, I loved describing the outstanding BYU Law community, including the J. Reuben Clark Law Society, to prospective students. In my new role, I am excited to be more closely engaged with that service-oriented, high-achieving community of alumni and Law Society members."

Dean Sorenson is also known for her previous volunteer work as chair of the JRCLS Finance Committee and as a senior fellow for BYU Law's International Center for Law and Religion Studies. She has, throughout her legal career, maintained a passion for the Law School and the JRCLS, as has been highlighted by her service.

After graduating from BYU Law, Dean Sorenson spent 4 years with Lewis & Roca in Phoenix, Arizona, and then 20 years with Motorola—first as a litigator, followed by extensive experience as a commercial attorney supporting global transactions, and then as a vice president and senior legal advisor. She was the director of global compliance operations for Biomet Inc., an international medical device company based in Warsaw, Indiana, at the time she was selected as the BYU Law dean of admissions.

The alumni association, JRCLS, and BYU Law community will benefit greatly from the experience and passion that Dean Sorenson brings to her new role.

Assistant Dean of Admissions

BYU Law is pleased to welcome Stacie A. Stewart, '14, as its new assistant dean of admissions. Dean Stewart looks forward to the opportunity to share her passion for both the law and the Law School in her new position.

"I am thrilled to be joining the admissions team . . . to share my enthusiasm for law with prospective students," she says. "My vision for admissions is to increase the reach of our recruiting efforts to further enrich our already amazing student body."

Prior to entering law school, Dean Stewart obtained a bachelor's degree in English and a master's degree in educational

leadership from Utah State University. She then spent 15 years working as a teacher and administrator for the Cache County School District in North Logan, Utah. A class titled "Legal Issues in Education" was required for her master's degree, and it sparked her interest in attending law school.

Dean Stewart is also passionate about increasing opportunities for women in the legal profession. During her time as a law student, she was president of BYU's Women in Law organization, and she went on to become a member of the board of Women Lawyers of Utah.

After graduation Dean Stewart clerked for the Honorable Judge Andrew J. Kleinfeld of the U.S. Court of Appeals for the Ninth Circuit in Fairbanks, Alaska, and then for the Honorable Judge Ted Stewart of the U.S. District Court for the District of Utah in Salt Lake City.



R E T I R E M E N T S

Following her clerkships, she entered private practice in the commercial real estate section of Parr Brown Gee & Loveless in Salt Lake City. As she leaves that position, she looks forward to working with colleagues from the networks of BYU Law alumni and the JRCLS to find and identify strong potential law students from around the country.

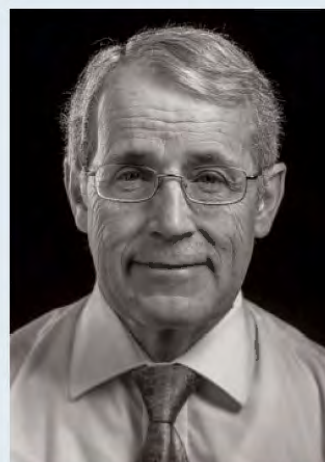
Assistant Dean of Communications

K. Marie Kulbeth, '10, has been selected as BYU Law's assistant dean of communications, a position focused on furthering the Law School's mission by increasing its ability to influence legal education, the legal profession, and the law in positive and meaningful ways. The Communications Department is responsible for media relations, website design, the *Clark Memorandum*, the annual report/magazine, social

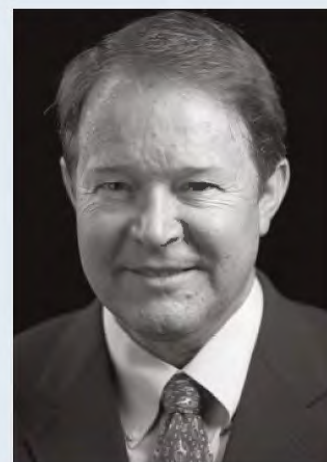
media, marketing, and brand management.

Dean Kulbeth originally returned to the Law School as its director of admissions. In that position she worked with Dean Sorenson to expand the reach of recruiting efforts not only through traditional means but also via social media and other platforms. As she focused on developing strategies to use technology to reach wider audiences, she developed a passion for sharing the Law School's story.

"As the director of admissions, I realized the breadth of innovation in clinical and other opportunities and the depth of scholarship being produced by our professors," she says. "I found myself telling the story of the Law School and its work not only to potential students but also to alumni and JRCLS members. In my new role, I look forward to the opportunity to increase the



Steven E. Averett



Lynn D. Wardle

positive impact of BYU Law and the JRCLS through sharing more widely the message of their service, scholarship, and excellence."

Dean Kulbeth clerked for the Honorable Judge W. Eugene Davis on the U.S. Court of Appeals for the Fifth Circuit in her home state of Louisiana. She then practiced business litigation in Salt Lake City at Strong & Hanni PC. As a law student, she explored her interest in nonprofit and international issues through work with immigration and United Nations organizations. Dean Kulbeth has maintained those interests as pro bono counsel, a volunteer with the Utah Court Appointed Special Advocate program, and a coach for the Jessup International Moot Court team.

Editor for the Clark Memorandum

Rebecca Walker Clarke is the new managing editor of the

Clark Memorandum. Clarke joins the publication team at the Law School after more than 15 years teaching English at Brigham Young University. She looks forward to continuing the legacy of her predecessor, Jane Wise, who is now an associate director at the International Center for Law and Religion Studies, in creating an outstanding publication.

RETIREMENTS

As a law librarian at the Howard W. Hunter Law Library, Steven E. Averett supervised collection maintenance and taught legal research. He began working at BYU Law in 1997.

The Bruce C. Hafen Professor of Law, Lynn D. Wardle began working at BYU Law in 1978. He specialized in family law and bioethics; taught constitution law, family law, and conflict of law; and defended marriage in several legal venues.

On Leadership and Law: The Wisdom of Five Deans

Excerpts from a panel of former BYU Law School deans, held August 31, 2017, at the Little America Hotel in Salt Lake City for the annual Founders Day celebration

At the 2017 Founders Day dinner, Dean D. Gordon Smith hosted a panel of five former deans of the J. Reuben Clark Law School: Elder Bruce C. Hafen, H. Reese Hansen, President Kevin J. Worthen, James D. Gordon III, and James R. Rasband. Dean Smith asked the former deans questions ranging from how they determined guiding principles for the Law School as its mission unfolded to what legacies were left by Carl S. Hawkins and Rex E. Lee—two former BYU Law deans who have passed away.

One of the questions Dean Smith asked addressed the effect of law school on leadership: “Many of you have talked about leadership training and how one of the purposes of the Law School is to train leaders for the university, the Church, and communities. . . . [What] is it that connects legal training with leadership?”

The following are excerpts from the panel’s responses.

Elder Bruce C. Hafen

We live in a society that is so polarized on so many issues that what passes for civil discourse—let alone analytical thinking—is somebody shouting on one extreme and someone else cursing on the other. It’s unsettling to me. . . . We need thoughtful, careful analysis and prayerful consideration of very complicated problems. And the kind of leaders we need in the

Church and in law firms and on school boards and in PTAs and in corporate boardrooms are people who will not polarize and just shout from the extremes but who can deal with really difficult problems. Law school offers that training, and at the BYU Law School, it is offered with a complete eternal perspective that you will not find anywhere else.

H. Reese Hansen

I think the Law School is the beneficiary of leadership training that occurs in other venues. So many students who attend have come up through the Church. And every one of them, by the time they get to law school, has served in a variety of capacities from the time they were 12 years old until they were 22 years old and coming home from their missions. They’ve all been practiced at leadership, and they bring that to the table. Then we do our best to teach them how to think critically and to write well and to articulate ideas and to take positions without being offensive and to do all the things that we try so hard to teach in law school. That’s a pretty irresistible combination of attributes brought to the BYU Law School, and then the Law School adds to those attributes.

President Kevin J. Worthen

Let me just share two thoughts about leadership: *process* and



deliberation—two words that lawyers quickly get familiar with. There’s power in terms of the *process* of being fair to people, of listening to them—the kinds of things we see in diminished quantities now. I think developing these processes is a really important lesson that’s learned in law school. And then *deliberation*—what we might call in a Church setting “counseling together”—is another key thing in terms of leadership. It’s the ability to deliberate with one another and exchange ideas without necessarily even defending the ideas. Particularly in a law school setting, you have a lot of deliberation happening, which really contributes to outstanding leadership.

James D. Gordon III

Two ways I think a legal education has special contributions are in teaching analytical skills and teaching skills of communication and persuasiveness. It’s important to do the analysis before you try to persuade other people. That’s usually the preferred order. I clerked for Judge [Monroe G.] McKay, and I used to tease him and say that he didn’t know how he felt about his subject until after he’d

heard what he had to say on the matter. But the truth is that he’s just so quick that I couldn’t think as fast as he did.

James R. Rasband

I’ve talked about law and leadership so much because I really do think that, at its core, law is a leadership degree. From the very first day of law school we’re trained to think like leaders in important ways. . . . Treating like cases alike is an important leadership skill. When studying standards of review, we think we might just be memorizing whether we’re going to apply clear error or abuse of discretion or de novo review, but in fact, what we’re learning over and over and over is, How do I judge something that is brought to me? Should I defer, or is this something important enough that I have to treat it de novo? Is it fact based? Such thinking is a leadership skill. Listening to another person with empathy, which lawyers are trained to do, is a leadership skill. Taking account of reliance interest, which is drilled into us from our first year, again, is a leadership skill. . . . The things that we learn mechanically in law school train us up as leaders.

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