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Carl Hawkins: The Indispensable Player

*J. Clifton Fleming, Jr.*¹

I am delighted to add a few words of tribute regarding my friend, mentor and long-time colleague Carl Hawkins. A good place to begin is with the story of the J. Reuben Clark Law School's quest for membership in the Association of American Law Schools (AALS).

American legal education and the American legal profession are both predominantly secular enterprises. In that context, the J. Reuben Clark Law School of Brigham Young University looks quite odd to most outsiders. It has fully disclosed Mormon preferences in both faculty hiring and student recruitment, its faculty and student body are overwhelmingly faithful Mormons, and one of the Law School's "selling points" is that it is a place where students and faculty can talk about how to integrate religious faith and secular work. Moreover, both students and faculty are required to adhere to a code of conduct that prohibits three prominent elements of modern American secular orthodoxy: alcohol, coffee and extramarital sex. Nevertheless, the Law School has come to be recognized by the American legal academy, bench, and bar as an institution that produces both excellently trained graduates and excellent scholarship and that has avoided becoming an institutional megaphone for narrow partisan interests.

But this recognition was far from assured in the beginning. When the Law School opened in 1973, the secular model of the American law school was so predominant, and many religiously affiliated law schools had lost so much of their denominational character that serious questions were asked regarding whether the BYU Law School could produce quality legal education and scholarship. There was a fear that the graduates would be given narrow, parochial training that would leave them as helpless in the world of modern law practice as residents of an Amish village.

1. Ernest L. Wilkinson Chair and Professor of Law, J. Reuben Clark Law School, Brigham Young University.

The Law School's founding Dean, Rex Lee, led the school through the ABA accreditation process rather expeditiously. AALS membership, however, proved a tougher nut to crack.

Of course, AALS membership was not essential for the Law School's students because once provisional ABA accreditation was secured in 1974, the students were able to sit for the bar exam in all U.S. jurisdictions. However, the Law School's founders had the higher aspiration that not only would the school be a faithful Mormon institution that competently provided legal education, but that it would also be recognized by the American bench, bar, and academy as outstanding by conventional standards. Dallin H. Oaks, then President of Brigham Young University, put it this way at the Law School's opening ceremony:

[T]he J. Reuben Clark Law School must in all respects be worthy of the name it bears. It cannot be satisfied with its assured standing among members of The Church of Jesus Christ of Latter-day Saints, but must attain a greatness that transcends religious lines and establishes itself in the eyes of legal educators, scholars, the judiciary, the legal profession, the business world, officials of local, state, and federal government, and citizens at large.²

To achieve these additional aspirations, membership in the AALS was essential because the AALS has no competitor for the role of pre-eminent learned society in legal education and admission to membership implies a degree of quality that goes beyond satisfying the requirements for ABA approval.

Application for AALS membership was made in 1978. There were no issues regarding the Law School's curriculum and pedagogy, the quality of its students and faculty, the faculty's scholarly work or the Law School's resources. Ordinarily, the membership application would have been approved as a matter of course. Nevertheless, the AALS had a difficult time achieving the necessary level of comfort with a school that was so out of step with a world in which the secular model predominated and in which the community of church related law schools was largely indistinguishable from the state university law school model. This discomfort was surely heightened by the fact that at the time, the Law School's sponsoring church

2. Dallin H. Oaks, Opening Remarks, August 27, 1973, available at http://www.law2.byu.edu/law_school/foundingdocumentsnew/pdf%20documents/oaksbecomingclarksschool.pdf.

maintained a theological position that did not provide priesthood membership to African Americans while simultaneously asserting that African Americans were entitled to secular legal equality. This was not a dichotomy that late twentieth century American intellectuals could easily grasp and it caused many in the legal academy to consider the J. Reuben Clark Law School as being on the wrong side of the fight for civil rights in America.

In this context, Carl Hawkins was an indispensable player. Because of his long career at the University of Michigan Law School and his co-authorship of one of the leading torts casebooks, he had great credibility with the age cohort that then led the AALS. Moreover, Carl's dignified persona combined with his sophisticated understanding of the world, his first-class intellect and his calm, dispassionate demeanor signaled the opposite of parochialism or zealotry. When he told the AALS leaders that the J. Reuben Clark Law School was a place where students were rigorously and broadly educated and where students and faculty could explore all sides of important legal issues, the message was believed, and rightly so. Thus, Carl played a critical role in the AALS Executive Committee deciding in February 1981 to recommend approval of the Law School's membership application.

However, this recommendation required the further approval of the AALS House of Delegates at its January 1982 annual meeting and because of the Law School's unique characteristics, approval was not guaranteed. Carl had assumed the deanship in August 1981 when Rex Lee left to become Solicitor General and so it became Carl's challenge to apply the personal assets described above to the task of completing the quest for AALS membership. He performed his role superbly and the House of Delegates gave its approval with only one dissenting vote.

Thereafter, Carl helped cement the Law School's relationship with the AALS by his service on the highly important Accreditation Committee. His term led to the subsequent appointments to that Committee (now known as the Membership Review Committee) of Reese Hansen, myself, and Kevin Worthen. Ultimately, this led to Reese Hansen becoming the current President of the AALS. Because of Carl's foundational work, the Law School now occupies a respected position within the learned society of American legal education and has thereby made significant progress in achieving the

recognition that President Oaks spoke of at the Law School's opening in 1973.

In addition to his indispensable role in securing AALS membership, Carl made other valuable contributions. First of all, he actually knew how to establish and operate a legal education institution. That knowledge was in short supply among the founding faculty because only Carl and two others had any experience as full-time legal academics; the legal education experience of Rex Lee, the founding Dean, was limited to part-time teaching and the other faculty were similarly inexperienced. Thus, Carl's knowledge of such things as how to evaluate faculty prospects, faculty governance procedures and the realities of law school administration was invaluable.

But in spite of the fact that Carl knew so much more about legal education than all but two of his colleagues, he never overbore. He had no desire to dictate. He was always willing to listen patiently while the less knowledgeable members of the faculty, myself included, engaged in lengthy debates as we worked out for ourselves the answers to questions for which Carl already had the solution. And when we got things wrong and had to make corrections, he never said "I told you so." In these ways Carl was indispensable to the building of a faculty that has grown into considerable stature in American legal education.

At a personal level, Carl was my friend and mentor. When I joined the faculty in 1974, I owned only one car and it was pre-empted by the needs of a growing family. So Carl, who lived nearby, drove me to the Law School each morning until he gave me an old family car that had become surplus as his own children left home. During our commuting hours, he shared invaluable insights such as "It's impossible to make exams too easy; students will always find ways to distribute themselves along a spectrum; so don't kill yourself in pursuit of creating the perfect exam" and "No matter how much you prepare, you will have days when you're lousy in the classroom so don't let it get you down."

Most importantly, Carl was a man who had applied a splendidly rigorous mind to the important questions of life and faith and had come out of that process with a balance of secular accomplishment and religious devotion that provided me with an invaluable example.

For the J. Reuben Clark Law School and for me personally, Carl Hawkins was an indispensable player and we will miss him greatly.