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A Walk by Faith: Founding Stories of the Law School

Bruce C. Hafen

My main qualification to talk tonight is that I was present at the law school's founding. In 1971, when I was four years out of law school, the new president of BYU, Dallin Oaks, hired me as his assistant—primarily to help get the law school started. I accepted that job because I hoped to be on the school's faculty.

I've been encouraged to tell some of the Law School's founding stories. Why would those stories interest us after so many years? Because there is power in stories. Even the scriptures are primarily a collection of personal stories. In His desire to give us guidance about life, God could have given us a large rule book, a series of essays, or perhaps a Gilbert's outline with the title "Life, in Black Letter Law." But He didn't. He gave us scriptural stories about people like ourselves. We can identify with these stories, and then we learn from them. Think of it as case law—real cases about real people who are often in perplexing circumstances. What these people discover teaches us about principles derived from real-life experience. Sometimes the scriptures tell us a story and then say, "And thus we see . . ." Some of the Law School's founding stories are like that.

The person who first proposed the J. Reuben Clark Law School was Ernest L. Wilkinson during his final years as president of BYU. President Wilkinson had done more than anyone to create the magnificent BYU campus we see today, and I am grateful to him that he proposed a law school. However, his vision of legal education carried some political overtones that some of the Church's leaders did not share. Moreover, his proposal ran counter to BYU's basic mission as an undergraduate university. So Ernest's motion might have died for want of a second. But somehow the law school

idea caught the First Presidency's imagination enough that they chose to pursue it in their own way.

They talked with many leading LDS lawyers and law professors. None of the three lawyers who ended up as the Law School's first leaders—Dallin Oaks, Rex Lee, and Carl Hawkins—at first thought the Law School's creation was a very good idea, and they all expressed that view to Church leaders. They saw no need to train more LDS lawyers, and they worried that the school might become someone's political captive.

In spite of that candid advice, and even though they chose not to adopt President Wilkinson's politically flavored model, the Brethren decided to create the Law School anyway. They had felt a clear spiritual nudge, and they knew from experience that the reasons for that nudge would eventually become more clear. The process of acting on an inspired premise and then discovering a supporting rationale by hindsight is not unusual. That is what happened with the Law School's founding, and it happens in other ways when we walk by faith.

Dallin Oaks was a full professor at the University of Chicago Law School and a stake presidency member in Chicago during the discussions about two concurrent events—appointing someone to replace Ernest Wilkinson and creating the Law School. When the Brethren talked with him about becoming BYU's president, they knew his reservations about starting a law school. They said they only wanted a school that met very high professional standards, and they were willing to fund it. Then they asked, if he were president, would he see it as his duty to carry out their vision for the school? President Oaks accepted their counsel and superbly carried out their mandate. Thus we see that giving counsel to Church authorities means two things: give your best honest advice; and, when they make a decision, don't oppose it—advocate it.

Here's how I learned firsthand about the nonpolitical attitude of the Brethren toward the Law School. President Marion G. Romney was the First Presidency's representative for Law School matters. He had chaired the committee that recommended Dallin Oaks to be BYU's president. That same committee later selected Rex Lee to be the founding dean. President Romney also conducted a personal interview with each prospective law faculty member.

During his interview with me, President Romney said, "Now, let's talk about your politics." That got my attention. He said, "Are you either a Socialist or a John Bircher?" I said, "Some people think those are the only two choices." He said, "I know. That's why I'm asking. Are you a Socialist or a Bircher?" I said, "No, I'm neither." He said, "Then you're alright. Let's talk about something else." Later on, when I shared that experience with President Oaks, he said, "Tell that story—widely and often."

One of the best role models for the Law School's commitment to political diversity is President James E. Faust. He was once president

of the Utah State Bar, and he served in the Utah legislature as an active Democrat. While in the First Presidency, he once said, “Both locally and nationally, the interests of the Church and its members are [best] served when we have . . . good men or women running [from both parties], and then no matter who is elected, we win.”

I once heard President Faust say that his most satisfying experiences as a lawyer came not in representing big corporations but in representing those he called “the little people,” meaning people who are disadvantaged in some way, perhaps including their ability to afford legal advice. As a lawyer, he was a humane servant and a spiritual healer.

Is it inconsistent to be both a healer and an advocate? The Master Healer often referred to Himself as our “advocate with the Father.” I will forever be grateful that Christ, the greatest Advocate, is willing not only to represent the guilty but also to heal them. The story of the Savior’s life and mission is the most significant story embedded in the deepest foundations of the Law School.

Let me return to 1971 and 25 years of working closely with Rex Lee. Rex was one of the most talented and colorful characters ever to walk among us. He came from a tiny town in Arizona to BYU in 1953 as a wide-eyed freshman who dreamed of someday becoming one of the greatest lawyers in America.

Rex’s first great victory as an advocate came in his BYU student days, when he persuaded Janet Griffin to marry him. With her grace, refinement, and deep spiritual instincts, she made that Arizona diamond in the rough really sparkle. Early in their dating, Rex once heard that Janet had been out with somebody else. His way of communicating his feelings was to call her on the phone, and without identifying themselves, Rex and his cousin played their guitars and sang to her with pure Arizona honky-tonk pathos: “Your cheatin’ heart will tell on you. . . .”

Rex never lost his rural Arizona sense of humor. Once when he was telling jokes at a BYU fund-raising dinner, a non-LDS visitor at our table said, “Who is that guy? Listen to his sense of timing! He could make a fortune as a stand-up comedian.” I still remember one of Rex’s favorite stories—maybe he told it that night: A very frugal man dies. His widow, honoring his frugality, calls the local paper and asks, “What is the cheapest obituary I can buy?” The paper agent says, “We’re having a special today—you can get six words for the price of three—just 15 dollars.” She says, “Is that your cheapest obituary?” He says, “Yes.” “Alright,” says the widow, “let’s try ‘Fred died Wednesday.’” “Okay,” he says, “you get three more words—it’s all included in the 15 dollars.” “Oh,” she says, “Fred died Wednesday. Toyota for sale.”

Rex and I served in the same BYU student stake for a few years; he was on the high council and I was in the stake presidency. Once he told me why he liked being on the high council so much. He said, “That calling has

the best ratio between work and glory of any job in the Church.” We didn’t know whether to increase his work or decrease his glory. Another time we sat together in a sacrament meeting on a warm afternoon. Rex had dozed off. I nudged him and whispered, in jest, “Rex, you’re supposed to get up and give the closing prayer.” He opened one eye and said, “The First Amendment to the Constitution of the United States protects the right of religious freedom. You worship your way, and I’ll worship mine.” Then he went back to sleep.

In a more serious vein, may I share what I heard Rex say more than once to graduating law students. With that look he flashed when he was feeling what he called “deadly serious,” he would say,

If you forget everything I’ve taught you about constitutional law, please remember one thing about me. I wasn’t there on that spring day in 1820 when Joseph Smith saw the Father and the Son; but I know as surely as if I had been there that Joseph was God’s prophet and that Jesus is the Christ.

When I heard these words from Rex’s heart, I sensed that J. Reuben Clark, whose massive old desk was in Rex’s law school office, would have felt glad about the school that bears his name.

In late 1971, after interviewing a number of people, including some with considerable experience as law teachers, President Romney’s committee selected 36-year-old Rex Lee as our founding dean. At the time, this seemed like a very risky, even audacious, decision. The Law School wasn’t accredited; it had no faculty, no building, no library, and no students; and everything rode on the academic reputation of the dean and the faculty. Rex was a young practitioner from Phoenix who had never been a full-time law teacher and had never published a law journal article as a faculty member, though he had taught a part-time class or two. He had graduated at the top of his class at Chicago and had clerked for Justice Byron White; but his was a career of potential, not accomplished fact. Only later would Rex go on to be assistant U.S. attorney general, then solicitor general, and then a star Supreme Court advocate.

Because other LDS candidates considered for dean had far more experience in legal education, I was frankly a bit astonished when Rex was chosen. Yet just before I learned of his selection I had a strong premonition that Rex would be the dean. I once had a chance to ask President Romney why his committee chose Rex. He said in his matter-of-fact way,

Well, I told the Brethren that I didn’t know anything about how to pick a law school dean. But I did know how to pick a stake president, because I’d done that many times. They said I could do this the same way. So that’s all we did: we interviewed carefully, searched their hearts, and prayed for direction. All I know is, Rex was the man the Lord wanted, and I couldn’t tell you why.

Now, with over 30 years of hindsight, it was a brilliant decision, for all of the reasons Judge Dee Benson cited last year about Rex's charismatic leadership and his eventual national reputation in the U.S. Justice Department and beyond. But no one could have foreseen that with certainty in 1971. Rex was simply a young man of promise. The decision to appoint him was an act of faith based on a clear prompting to the Lord's anointed servants. Thus we walk by faith, not always knowing beforehand the things we should do.

As important as choosing the dean—in some ways even more important—was the selection of the first faculty. The whole idea of trying to build a genuinely religious law school that would be nationally recognized seemed pretty far-fetched in 1971. A new law school can't be accredited until after the first class graduates. So how do you persuade talented new law students to risk their future careers on an unknown school? The ABA's accrediting team was already very skeptical about mixing religion with legal education. And how about the very secular law firms who would need to hire the graduates? Most important, because so much else hinged on it, how do you persuade experienced LDS law teachers to leave secure positions for an unproven venture? Yet if the Law School couldn't establish strong credibility right at the beginning, it might have been impossible to claim it later on.

A few months after Rex's appointment, we were getting a little frantic. None of the experienced LDS law teachers had committed to come. Rex and others had made personal visits to each person on this very short list, but they were all waiting to see what one man—Carl Hawkins—did. Carl was a senior professor at the University of Michigan, one of the nation's top law schools. He was the stake president in Ann Arbor, was the coauthor of a well-known torts casebook, and was respected in the world of legal education for both his intellect and his integrity. Carl wasn't about to leave all of that to take a chance on BYU. Indeed, he believed he could help the Church more by staying at Michigan, because that vantage point gave him a more objective supporting voice.

In an act of desperation, Rex recommended to President Romney that the First Presidency call Carl on a mission to the Law School. President Romney said, "We don't do things that way." Ever the creative advocate, Rex said, "But President Romney, remember when Joseph Smith and Oliver Cowdery received the Aaronic Priesthood, and Joseph had to baptize Oliver before Oliver had baptized him? Sometimes when we're just starting out, we have to do things a little differently." But it was no use. We could do nothing but pray.

Then one day Rex and I were in President Oaks' office with BYU's academic vice president Robert Thomas. President Oaks' secretary called to say that Carl Hawkins was on the line. Dallin took the call and talked softly with Carl out of our hearing. When he hung up he looked out the window

of his office at Mount Timpanogos, and I saw tears in his eyes. Then he smiled and said to us, “The Lord must really want this Law School. And He wants it to be a good one. Carl is coming!” We whooped and hollered as if Lancelot were coming to Camelot. From then on, the other positive dominoes fell into place, and Carl became our senior statesman and expert witness, attesting to all comers that this law school met the highest standards of professional quality.

Some people have attributed Carl Hawkins’ decision to the formidable persuasive powers of Dallin Oaks and Rex Lee, and it is true that their presence at BYU was a positive factor for him. But Carl is a very private person who doesn’t say much about his most personal feelings. Only years later did he tell me the real reason why he came. I share this now with his permission.

He knew his decision was pivotal for other people, but he honestly felt he should stay at Michigan. He “could not imagine a more satisfactory professional position” than the one he held. An unusually rational and orderly thinker, he made a list of the reasons for staying and for leaving. He talked with friends and family. But as the practical deadline drew near, he decided to fast and pray. The day he chose to fast turned out to be an exasperating day at school, leaving him no time for personal reflection. So he went to his evening stake presidency meeting, where he planned to discuss his question with his counselors. But pressing stake business took more than their available time. Finally Carl arrived home after his wife, Nelma, was asleep. He was tired and frustrated that his desire for prayerful meditation that day had gone unfulfilled.

Nonetheless, as he began praying in his bedroom, he reviewed his list of factors for and against going to BYU. Carl later wrote in his personal history:

As I reviewed the list, I drifted into a state that I cannot adequately describe, involving something more than cognitive processes or rational evaluation. Each consideration was attended by a composite of feelings that could not be expressed in words but still communicated something more true and more sure than rational thought. Every consideration that I had listed in favor of going to BYU was validated by a calm, overwhelming sense of assurance. Each consideration I had listed for not going to BYU was diminished to the point where it no longer mattered.

[For example,] I had been deeply concerned whether my valued colleagues at Michigan would be able to understand my reasons for leaving. Now that concern melted away or evaporated into the night mists. . . . If some did not [understand], that would be their problem, and it would not diminish me. I fell asleep, content that I had finally made the right decision.

Soon afterward Carl made that phone call to President Oaks.

The detailed interaction between reasoning and revelation in Carl’s experience illustrates the Lord’s words: “I will tell you in your mind and

in your heart, by the Holy Ghost, which shall come upon you. . . . Now, behold, this is the spirit of revelation” (D&C 8:2–3).

“In your mind and in your heart”—so was the Law School founded on spiritual processes or rational ones? That question would have made no sense to President Romney, because he believed that you need to use your head, even when you end up following your heart. Of course spiritual processes are more important, but, to him, as to his great mentor, J. Reuben Clark, intellectual excellence was simply part of abundant spiritual excellence, and religious devotion was no excuse for professional mediocrity.

At the same time, the stories I’ve told show that the process of revelation played a bigger part in founding the Law School than some people might realize. I bear witness of the divine source and significance of that inspiration in the decisions to create the school, to appoint the first dean, and to bring together the first faculty.

I also saw the crucial role of reason, homework, and professional credibility in those same decisions and in the later fruits of the early decisions. Someone once said that the most important factor in solving human problems is the character and the competence of the people trying to solve the problems. When I remember those founding fathers—President Romney, President Oaks, Rex Lee, and Carl Hawkins—I am grateful not only for their faithfulness but also for their competence.

In the 35 years since that founding era, I have marveled time after time at incidents that confirm to me the value and purpose of having this Law School. I’d love to know all the stories of graduates and faculty whose personal life experiences together provide that confirmation. For now, I offer examples from just two legal fields.

First, Marie and I have just returned from four years in the Europe Central Area Presidency, where the process of obtaining legal recognition for the Church in some countries is still unfolding. I saw firsthand in countries like Slovakia, Moldova, and Serbia the fruits of Professor Cole Durham’s decades-long effort to establish his professional credibility as an expert on international religious freedom. I also saw his work greatly augmented by Law School graduates who had developed the necessary skill and relationships to help make a difference.

I have reason to think that Cole’s initial steps into the field of religious liberty came in answer to his own prayers as a young faculty member about how his scholarly work could someday bless the Church. The quality of his work over many years won the respect of other scholars on international human rights long before he knew that new governments in Eastern Europe and beyond would someday need and welcome the expertise he developed on religious liberty. I recently saw the power of his influence as missionaries who had earlier been asked to leave certain countries could now go back.

When the First Presidency first felt that spiritual nudge to create the Law School, how could they have known that within 20 years the Berlin Wall would fall and that Professor Durham's stature and capacity would help open the doors of many new nations to the Church?

The second example is family law. When I was a law student, family law was among the most boring topics in the curriculum. But since those days family law has become a raging battleground for some of the most significant legal and social issues of our time—issues in which the values of the restored gospel are very much at stake.

Just as the Brethren in 1970 couldn't have foreseen the fall of Communism, they also couldn't have known that family life would come under the relentless—often legally based—attacks we see today.

One way to answer those attacks is to take prophetic statements, such as the Proclamation on the Family, as the premises for our reasoning, then to look for the evidence and develop the rationale to support the premises—something anyone with legal training can do.

For instance, we are living through a revolution in the way people think about marriage. Traditionally the law strictly limited the terms on which people could either start or end a marriage, primarily because the law saw marriage as our culture's primary social institution. But in the 1960s both our courts and our culture began to see marriage more as a private choice than as a social institution. That opened the door to no-fault divorce, which helped make America the world's most divorce-prone society. That trend has led to what some call "the remarkable collapse of marriage," creating many unstable families and damaging America's children. Damaged children create a damaged society, and when enough families are dysfunctional, society itself is dysfunctional.

President Hinckley has said that the number of people hurt by crumbling families today is an international problem of urgent concern. In his words, "I think it is my most serious concern."

We are also now in the midst of a national debate about same-gender marriage. The First Presidency has taken a public position against such marriages, but once more they haven't provided a complete rationale. Yet those with legal training can articulate the developing rationale as it is needed. For example, we can see that the gay marriage movement is based on the same individualistic legal concept that created no-fault divorce in the late 1960s. When the law upholds an individual's right to *end* a marriage, regardless of social consequences (as happened with no-fault divorce), that same legal principle can be used to justify the individual's right to *start* a marriage, regardless of social consequences (as happens with same-gender marriage).

So what is the rationale for the principle that our marriage laws should be highly concerned with social consequences? And what evidence supports the proposition that same-gender marriage is harmful to society? In

general, the rationale for both of these principles is in the overwhelming empirical evidence that children do far better by every measure of child well-being when they live with both biological parents.

This isn't the time to develop those comments further, but I'll share an image from family law that reflects a larger point. I remember a Japanese family law professor who came to BYU a few years ago after reading some of our faculty's scholarly work. He was troubled about the devastating effect of individualistic American law on Japan's traditional, family-oriented culture, but he had seen a much more encouraging approach coming from the work at our law school. He said, "The Americans beat us in the Second World War; why do they also have to inflict on us their movies and their laws?" After he had been on the campus in Provo a few days, he said, "This place is an island of hope in the land of the Apocalypse." He was especially curious about the students he had met. Speaking of them he asked, "What is it about these wonderfully bright and wholesome young people? Please tell me the secret behind all the shining eyes."

In an important sense, each student and graduate of this Law School has a duty to articulate wisely the secrets behind his or her shining eyes, whether in religious liberty, family life, or any other topic laden with gospel values. These are not mere political issues. In so doing, you will illustrate in your own way the inspiration in the founding of the Law School.

You will also demonstrate that inspiration by living lives of consecrated Christian discipleship. Whether in your family, your ward, your office, or your daily walk in life, the influence of your personal example of faithfulness combined with uncompromising competence will do as much as anything else to fulfill the Law School's original purpose. I've heard people from all across the country—senior partners in law firms, judges, political leaders, Church leaders, and others—speak with admiration about the students from this school. I've heard them over and over, and when I do, I think, "There's another example of why the creation of the Law School was an inspired idea."

Tonight's theme about acting by faith and understanding by hindsight is fundamental doctrine. When Nephi first began to build his ship of curious workmanship, the Lord told him,

And I will also be your light in the wilderness; and I will prepare the way before you, [and] inasmuch as ye shall keep my commandments ye shall be led towards the promised land; and ye shall know that it is by me that ye are led.

. . . After ye have arrived in the promised land, ye shall know that I, the Lord, . . . did deliver you from destruction; yea, that I did bring you out of the land of Jerusalem. [1 Nephi 17:13–14]

These words apply fully to our Law School of curious workmanship as we look back now and know that "it is by me that ye [were] led."

I hope we might draw on this doctrine in the very personal process of following the counsel of the Lord and His prophet, even when we don't always fully understand the reasons why they give us that counsel. The Law School's founding is a type and shadow of other moments when the Lord may give us a strong prompting or the First Presidency may give us a clear conclusion without supplying a fully developed rationale. Experience shows that in such cases, the rationale will become more clear with time.

That happened in founding the Law School, and it happens in our experience as members of a Church that is blessed by prophetic guidance. Sometimes in seeking spiritual help for our personal decisions, we simply cannot know everything that would fully explain why a particular path is the right one. So we must often walk by faith, without demanding a complete explanation before we will proceed. Thus, as Paul wrote,

Cast not away therefore your confidence, . . .
 . . . that, after ye have done the will of God, ye might receive the promise.

...

Now the just shall live by faith: but if any man draw back, my soul shall have no pleasure in him.

But we are not of them who draw back. [Hebrews 10:35–36, 38–39]

I am grateful that the Law School founders were not “of them who draw back.” They were willing both to work and to wait to see the fulfillment of the Lord's promises about the value of having the school.

One implication of this theme is that as we gain experience in following the Lord and His servants, we will increasingly see reasons for the hope that is in us. Your legal training will bless you to see those reasons unfold after you have committed yourself to walk by faith in some demanding situation. As you see the emerging rationale and evidence, you can help others by articulating to them what you see. That is what good advocates do. As Peter wrote, “But sanctify the Lord God in your hearts: and be ready always to give an answer to every man that asketh you a reason of the hope that is in you with meekness and fear” (1 Peter 3:15).

I thank the Lord for the hope that is in me, above all for my hope in Christ. I testify that He lives and that He directs the work of His servants and answers the prayers of His people, at times communicating with them through “something more true and more sure than rational thought,” even to very rational people, even law professors. I not only believe this, I know it. I know it both by a spiritual witness and because of what Helaman calls “the greatness of the evidences” (Helaman 5:50) the Lord has shown me—in my life and in the lives of many others, including our collective experience with J. Reuben Clark Law School. In the name of Jesus Christ, amen.

This Founders Day address was given to the J. Reuben Clark Law Society at Little America Hotel in Salt Lake City on August 30, 2007. Reprinted from the Clark Memorandum, spring 2008, 20–26.

Bruce C. Hafen received his JD from the University of Utah in 1967. He served as a law professor at J. Reuben Clark Law School 1973–1996, president of Ricks College (now BYU-Idaho) 1978–1985, dean of J. Reuben Clark Law School 1985–89, and provost of Brigham Young University 1989–1995. He is currently a member of the First Quorum of the Seventy.