


Fall 2004

## Clark Memorandum: Fall 2004

J. Reuben Clark Law Society

J. Reuben Clark Law School

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# cm

CLARK MEMORANDUM

J. Reuben Clark  
Law School  
Brigham Young  
University  
Fall » 2004

DEAN KEVIN J WORTHEN

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The J. Reuben Clark Law Society draws on the philosophy and personal example of the Law School's namesake, J. Reuben Clark Jr., in fulfilling the following mission: We affirm the strength brought to the law by a lawyer's personal religious conviction. We strive through public service and professional excellence to promote fairness and virtue founded upon the rule of law.



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- Alumni Weekend*
- New Mission President*
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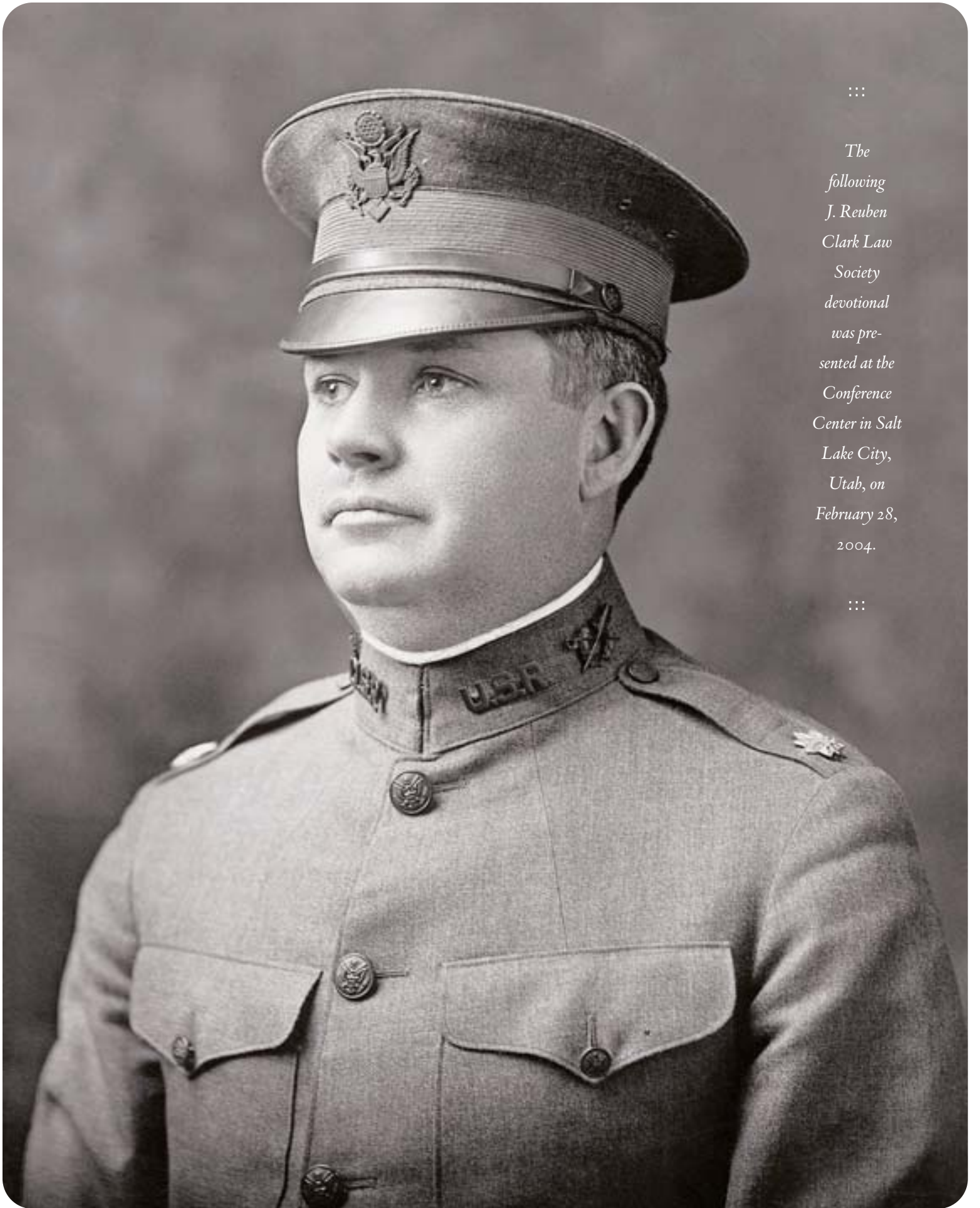


BY PRESIDENT BOYD K. PACKER ::: *Acting President of the Quorum of the Twelve Apostles*



*On the Shoulders of*  
**Giants**





∴

*The following J. Reuben Clark Law Society devotional was presented at the Conference Center in Salt Lake City, Utah, on February 28, 2004.*

∴

# In my hand is a two-pound English coin.

Around the edge are inscribed the words “Stood on the shoulders of giants.” ∴ Sir Isaac Newton invented calculus and the reflective telescope, defined the laws of motion, and did an astonishing list of other things. Asked how he was able to do it all, he answered: “I stood on the shoulders of giants.”<sup>1</sup> ∴ We stand on the shoulders of a giant: President J. Reuben Clark.



Less than a month after my 37th birthday, I was sustained as a General Authority. On October 6, 1961, I was set apart in the council room by the First Presidency, and later that same day I received word, “President Clark just passed away.” His ministry closed the same day that mine began.

The mention of his name polishes the windows of my memory. I see clearly and feel deeply the memory of this great man. Now you must not assume that I suppose that I compare in stature with him. I am, with you, one of many who stood on his shoulders.

My close personal contacts with President Clark were very few. I heard him speak many times. I stood in awe of him.

I was in his office once and remember very clearly how he looked and what he said. I sat next to him at the dinner when he gave his address entitled “Reflective Speculation.”<sup>2</sup> And there were other times.

## THE QUESTION

Now I have a question for you of the J. Reuben Clark Law Society. I quote President George Albert Smith, the second of the three Presidents to whom J. Reuben Clark served as a counselor.

President Smith said:

*A number of years ago I was seriously ill; in fact, I think everyone gave me up but my wife. With my family I went to St. George, Utah, to see if it would improve my health. We went as far as we could by train, and then continued the journey in a wagon, in the bottom of which a bed had been made for me.*

*In St. George we arranged for a tent for my health and comfort, with a built-in floor raised about a foot above the ground, and we could roll up the south side of the tent to make the sunshine and fresh air available. I became so weak as to be scarcely able to move. It was a slow and exhausting effort for me even to turn over in bed.*

*One day, under these conditions, I lost consciousness of my surroundings and thought I had passed to the Other Side. I found myself standing with my back to a large and beautiful lake, facing a great forest of trees. There was no one in sight, and there was no boat upon the lake or any other visible means to indicate how I might have arrived there. I realized, or seemed to realize, that I had finished my work in mortality and had gone home. I began to look around, to see if I could not find someone. There was no evidence of anyone living there, just those great, beautiful trees in front of me and the wonderful lake behind me.*

*I began to explore, and soon I found a trail through the woods which seemed to have been used very little, and which was almost obscured by grass. I followed this trail, and after I had walked for some time and had traveled a considerable distance through the forest, I saw a man coming towards me. I became aware that he was a very large man, and I hurried my steps to reach him, because I recognized him as my grandfather. In mortality he weighed over three hundred pounds, so you may know he was a large man. I remember how happy I was to see him coming. I had been given his name [George Albert Smith] and had always been proud of it.*

*When Grandfather came within a few feet of me, he stopped. His stopping was an invitation for me to stop. Then . . . he looked at me very earnestly and said:*

*“I would like to know what you have done with my name?”*

*Everything I had ever done passed before me as though it were a flying picture on a screen—everything I had done. Quickly this vivid retrospect came down to the very time I was standing there. My whole life had passed before me. I smiled and looked at my grandfather and said:*

*“I have never done anything with your name of which you need be ashamed.”*

*He stepped forward and took me in his arms, and as he did so, I became conscious again of my earthly surroundings. My pillow was as wet as though water had been poured on it—wet with tears of gratitude that I could answer unashamed.<sup>3</sup>*

The question is: What are you doing with the name of President J. Reuben Clark?

President Clark's service was divided into two equal parts: twenty-eight years in law and government and twenty-eight years as counselor in the First Presidency.

President Clark grew up as a farm boy in tiny Grantsville. At age eleven he could plow with a team of horses. If the weather was too cold for others to go, he would walk to the evening sacrament meeting alone.

In a large family he learned to work. He had a father and a mother of pioneer virtue and integrity. His father wrote in his journal, "I went down between the barley and wheat in the old ditch, and knelt down and prayed and dedicated the grain that we have sown and asked the blessings of the Lord upon it; this I do every year with everything that I plant."<sup>4</sup>

Another local boy, Heber J. Grant, knew him well. These two farm boys would meet again.

With an elementary school education and at the urging of his father, President Clark moved to Salt Lake City to go to college. Dr. James E. Talmage was his mentor. When he went east to school, Dr. Talmage said, "He possessed the brightest mind ever to leave Utah."<sup>5</sup>

He married Luacine Savage. They became parents of three daughters and one son. From 1898 to 1903 he was teacher and administrator in Heber and in Cedar City.

Before leaving to study law, he called on President Joseph F. Smith. President Smith cautioned him about the field of law and set him apart on a mission to be an exemplary Latter-day Saint.

Years earlier another young man wanted to go east to study law. James Henry Moyle, father of President Henry D. Moyle, met with President John Taylor. President Taylor said he was "opposed to any of our young men going away to study law. It is a dangerous profession."

His counselor George Q. Cannon persuaded President Taylor that "Brother Joseph had to engage lawyers. So [did] Brother Brigham."

President Taylor agreed then that it would be all right for Brother Moyle to go, and then he spoke of "the pitfalls into which the young man might slip unless he [was] careful." He gave him a blessing, from which I quote:

#### Introduction by Elder D. Todd Christofferson of the Presidency of the Seventy

To be candid, my assignment this evening is superfluous—President Boyd K. Packer needs no introduction. Still, I am grateful for the opportunity to speak about him given his influence for good in my life. He is quick to deflect praise or recognition, but this once I intend to impose upon him.

President Packer's experience and achievements are extensive. He was born September 10, 1924, in Brigham City, Utah, the 10th of 11 children of Ira Wight Packer and Emma Jensen. Following high school, he achieved a coveted goal when two days before his 20th birthday, he graduated from advanced pilot school and received his silver wings as a military pilot. He served in the Pacific Theater during World War II.

After the war he learned the name of Donna Edith Smith when she was crowned Brigham City Peach Queen. His judgment was as good then as now, and he soon got acquainted. They married in 1947, and in the ensuing years have become the parents of 10 children and, at the moment, grandparents of 59 and great-grandparents of 26.

President Packer attended Weber College and received bachelor and master of science degrees from Utah State University and a doctorate in educational administration from Brigham Young University. He has since become the recipient of honorary doctorates from Brigham Young, Utah State, and Weber State universities. He served as supervisor of Seminaries and Institutes for the Church and as a member of the administrative council and of the board of trustees of Brigham Young University.

Beyond his achievements and recognitions in the academic world, President Packer has had extensive experience in government and corporate roles. As a young man he served as a city councilman in his native Brigham City. In more recent years he has been a member of advisory committees to the governor of Utah and to both the Interior and Defense departments of the United States. He has served on the board of directors of Zions Bank and the Bank of Utah and as chairman of the board of four insurance companies, including Beneficial Life.

On September 30, 1961, at age 37, President Packer was sustained as an Assistant to the Twelve. Sister Packer learned of the call when she heard his name presented in general conference as she listened at home on the radio. She was 33 and the mother of eight. While an Assistant to the Twelve, President Packer served as president of the New England States Mission,

covering the northeastern United States and much of eastern Canada. Then, at April conference in 1970, he was sustained as a member of the Quorum of the Twelve Apostles. He has been the Acting President of that Quorum since June 1994.

This life summary, incomplete as it is, bespeaks a man of substantial accomplishment but only begins to reveal the depth of the man. Nor will this introduction achieve that goal—the time is far too short. What I can do is briefly add to this recitation of facts something of the flavor of this remarkable life.

Those who have a chance to spend any time around President Packer are treated to a wonderful sense of humor. Apparently this has been a trait of his since youth. His biographer tells of a triple date with high school girlfriends in Brigham City. Boyd (as he was then known) and two friends were driving to the Packer garage after they had taken their dates home. Passing the Brigham City Tabernacle, they saw Carl Josephson parked in his police car. One of the boys leaned out and made a convincing imitation of a siren. It was illegal for private cars to have sirens, so Officer Josephson came after the boys with his lights flashing. When they stopped, he inquired, "All right, fellows, where's the siren." Boyd's quick reply: "We just took her home."

Sister Packer has been willing to indulge that wry wit as, for example, when President Packer returned from an assignment in Idaho years ago and reported, "While I was up in Idaho, I found a rope." "That's nice," she replied, a little puzzled. Then he added, "There was a horse tied to the other end of it." That led to construction of a corral and much delight on the part of the children (see Lucile C. Tate, *Boyd K. Packer—A Watchman on the Tower* [Salt Lake City: Bookcraft, 1995], 42, 122).

President Packer is an accomplished artist, an avocation he has pursued since youth, not for public acknowledgment but for the benefit of family and friends and as a door to spiritual insight and understanding. Although it has been a private pursuit, we have lately prevailed upon him to permit an exhibit of his exceptional wood carvings and paintings. The exhibit is now on display at the Museum of Church History and Art and was featured in February's issue of the *Ensign*.

Excellence in teaching is something for which President Packer is universally recognized. The desire to be a teacher came to him early in life, and it has been a passion ever since. Elder A. Theodore Tuttle, who could appreciate President Packer's skill as a teacher perhaps better than anyone, once commented: "He has the capacity to translate an ethereal verbal concept to an understandable activity in

everyday life. . . . You will soon discover that what is explained so clearly and obviously was neither clear nor obvious before he explained it" (Boyd K. Packer, *Teach Ye Diligently* [Salt Lake City: Deseret Book, 1975], ix-x).

President Packer's commitment to teaching as a profession, however, has always been subordinated to and guided by his devotion to the Lord. He has observed a tendency in many members of the Church who have studied and joined the learned professions to begin to judge the Church, its doctrine, organization, and history by the principles of their own profession—that is, to measure the Church with the principles of one's profession as the standard. He has said: "In my mind it ought to be the other way around. A member of the Church ought always . . . to judge the professions of men against the revealed word of the Lord" (letter to the First Presidency, 24 October 1974, quoted in *Boyd K. Packer—A Watchman on the Tower*, 244).

It is gratifying that Sister Donna Packer is also with us this evening. President Packer has been heard to say with some frequency, "Without Donna, I am nothing" and "Donna is perfect." To say he draws strength from her is most certainly an understatement. His great ambition is to be good—a good husband, a good father and grandfather, a good teacher, a good son of his Heavenly Father. In that aspiration President Packer has had the benefit of parents who were truly good; but no other human influence in his life equals that of Donna, who embodies what it means to be good.

President Packer is a man tutored, tested, and seasoned in the work of the Lord Jesus Christ, whose disciple and witness he is. He labors in the Spirit. He waits upon the Lord. He is a scribe; therefore, in the words of the scripture, "he becometh a great benefit to his fellow beings" (Mosiah 8:18).

Given the audience, I would like to conclude this introduction by noting a legal proceeding in President Packer's experience that few have heard about. Some years ago he was served with a complaint in a civil action. His codefendant was Elder Bruce R. McConkie. The plaintiff alleged that Elder Packer's and Elder McConkie's general conference sermons had ruined her marriage. When the complaint was filed, Elder McConkie had already been dead some years. Of course, nothing came of the action, but President Packer has always wondered whether Elder McConkie was ever served with the complaint and, if so, how. I don't know the answer either, but with you I am grateful that President Packer has answered the "summons" to appear here this evening. President Packer, would you please take the stand.



*As thou hast had in thine heart a desire to go forth to study law . . . , we say unto thee that this is a dangerous profession, one that leads many people down to destruction; . . . abstain from corruption and bribery and covetousness, and from arguing falsely and on false principles, maintaining only the things that can be honorably sustained by honorable men; . . .*

*We set thee apart . . . to go forth as thou hast desired to study and become acquainted with all the principles of law and equity; [then there is a big “if” in the blessing] if thou wilt abstain from chicanery and from fraud and from covetousness, and [another “if”] if thou wilt cleave to the truth, God will bless thee.*

He was promised by President Taylor that if he would do these things, he would “grow up in virtue, in intelligence, power and wisdom, and stand as a mighty man among the House of Israel, and be a defender of the rights and liberties and immunities of the people of God.”

And this promise: “But if thou doest not these things, thou wilt go down and wither away.”<sup>6</sup>

In 1903 President Clark took his family to New York City to attend the Columbia University School of Law. In 1906 he graduated head of his class with an LLB degree. Shortly after he was appointed as Department of State Assistant Solicitor, and he published his classic “Memorandum on the Right to Protect Citizens in Foreign Countries by Landing Forces.” (Does that not sound familiar today?)

While living in Washington, D.C., he was appointed as an assistant professor of law at George Washington University.

He opened law offices in Washington, D.C., in New York City, and in Salt Lake City, where he specialized in international and municipal law.

A staunch Republican, he became influential in both Utah and national politics.

They tried more than once to draft him to run for the United States Senate. There was also an effort made to draft him as a candidate for the presidency of the United States until he firmly refused.

During World War I President Clark served as a major on duty with the U.S. Attorney General’s office. He helped prepare the original Selective Service regulations. He was awarded the Distinguished Service Medal.

President Calvin Coolidge appointed him as Under Secretary of State in 1928. He then published his “Memorandum on the Monroe Doctrine.” Even his critics praised it as a “monument of erudition,” a “masterly treatise.”<sup>7</sup>

The title of your society’s semiannual publication is *The Clark Memorandum*.

#### CALL TO THE FIRST PRESIDENCY

In 1930 J. Reuben Clark was named as U.S. Ambassador to Mexico. Two and a half years later he was called by letter as second counselor to President Heber J. Grant.

General conference had come and gone, and a vacancy in the First Presidency was not filled. A senior Apostle told me that two members of the Twelve waited upon President Grant and said, “We see you did not fill the vacancy in the Presidency.”

President Grant replied, “I know the man the Lord wants me to have, and he is not ready yet.” Pointing his cane at each of them, he said, “I know that feeling when it comes. I had it when I called you! And I had it when I called you!”

“When that cane pointed at me,” one of them told me, “I felt as if I had been electrocuted.”

It was nearly a year before President Clark was able to come to Church headquarters. During the first fifteen months he was away for five months in Washington, D.C., or abroad on-call for the President of the United States.

In October 1933 J. Reuben Clark Jr. was honored at a dinner in Beverly Hills, California. Telegrams of tribute arrived—also one letter from Will Rogers, philosopher and humorist, perhaps the best-known American of his time. Will Rogers apologized for the letter but said, “I have more to say than I am able to pay for [in a telegram].”

John Nance Garner, the vice president of the United States, was there, of whom Rogers said in his letter, “He . . . deserves [better work] than he’s got.”

Rogers then spoke in admiration of J. Reuben Clark and closed, “So, God Bless Reuben Clark, and make him a Democrat, or Republican as necessity demands! [signed] Will.”<sup>8</sup>

President Clark came to the First Presidency virtually unknown in the



Church. He had held no administrative positions, even on the local level.

He kept things very plain and simple. The president of Equitable Life once sent him a speech. President Clark replied, “A lot of it was over my head [trying to understand it], but I sort of held my breath and struggled to the top. . . . I accept your conclusions whether or not I fully understand the reasons, and I congratulate you on another fine speech.”<sup>9</sup>

I can imagine President Clark in his library with words scattered about on his desk. I see him discarding the longer ones and then picking up a word and fitting it into a sentence and then replacing it with one easier to understand. From words he made sentences, often very long ones, fastening them together into paragraphs and bundling them together into his inspired sermons.

#### HIS REVERENCE FOR THE LORD

One way or another his writing and his speaking had a common theme. It was



Counterclockwise from left:  
Birth home of J. Reuben Clark Jr.,  
Grantsville, Utah, built by his  
father in 1869–70; Clark's home  
at 80 D Street in Salt Lake City  
when he lived there; that home  
as it appears today.



there when he first spoke in church at age eleven. Like Nephi, “[he talked] of Christ, [he rejoiced] in Christ, [he preached] of Christ, [he prophesied] of Christ, and [he wrote] according to our prophecies, that our children may know to what source they may look for a remission of their sins” (2 Nephi 25:26).

His classic books *Our Lord of the Gospels*<sup>10</sup> and *Behold the Lamb of God*<sup>11</sup> are examples.

His “The Charted Course of the Church in Education,”<sup>12</sup> prepared by assignment from the First Presidency, is an enduring classic akin to scripture.

I give you two examples from his sermons. To the priesthood he spoke of the burden of debt:

*Interest never sleeps nor sickens nor dies; it never goes to the hospital; it works on Sundays and holidays; it never takes a vacation; it never visits nor travels; it takes no pleasure; it is never laid off work nor discharged from employment; it never works on reduced hours. . . . Once in debt, interest is your companion every minute of the day and night; you cannot shun it or slip away from it; you cannot dismiss*

*it; it yields neither to entreaties, demands, or orders; and whenever you get in its way or cross its course or fail to meet its demands, it crushes you.*<sup>13</sup>

From his classic address “They of the Last Wagon” given in 1947, the centennial of the arrival of the Pioneers:

*Morning came when from out [of] that last wagon floated the la-la of the newborn babe, and mother love made a shrine, and Father bowed in reverence before it. But the train must move on. So out into the dust and dirt the last wagon moved again, swaying and jolting, while Mother eased as best she could each pain-giving jolt so no harm might be done her, that she might be strong to feed the little one, bone of her bone, flesh of her flesh. Who will dare to say that angels did not cluster round and guard her and ease her rude bed, for she had given another choice spirit its mortal body that it might work out its God-given destiny?*<sup>14</sup>

President Clark’s mother was one of those so born in 1848.

#### CRITICISM

To President Clark criticism seemed to be an inescapable accompaniment of the doing of righteousness. He once wrote:

*It seems sometimes as if the darkness that surrounds us is all but impenetrable. I can see on all sides the signs of one great evil master mind working for the overturning of our civilization, the destruction of religion, the reduction of men to the status of animals. This mind is working here and there and everywhere.*<sup>15</sup>

President Clark spoke of the Pioneer leaders and in so doing described himself:

*Upright men they were, and fearless, unmindful of what men thought or said of them, if they were in their line of duty. Calumny, slander, derision, scorn left them unmoved, if they were treading the straight and narrow way. Uncaring they were of men’s blame and censure, if the Lord approved them. Unswayed they were by the praise of men, to wander from the path of truth. Endowed by the spirit of discernment, they [knew] when kind words were mere courtesy, and when they betokened honest interest. They moved neither to the right nor to the left from the path of truth to court the good favor of men.*<sup>16</sup>

#### INTELLECTUAL VISION

President Harold B. Lee said of President Clark:

*In the universal sweep of his great intellectual vision he had few equals and perhaps no superiors. He once said of his grandfather on his maternal line, Bishop Edwin D. Woolley: “He was so eloquent in political discourse that even his enemies came out to hear him.” So it has been with this grandson of Bishop Woolley [referring to President Clark]. Even those who violently disagree with his views [and there were many] are intrigued by his eloquence, his forthrightness, pure logic, and penetrating insight into the center and core of whatever subjects he undertakes to expound.*<sup>17</sup>

It was said of Bishop Woolley that if he should drown in a river, they would look upstream for the body.

President Spencer Woolley Kimball was a cousin of President Clark. When President Kimball would be very resolute (a kinder word than *stubborn*), one of the Brethren would say, “Well, he’s a Woolley.”

A young university student of political science once spoke to Elder Lee about the student’s vigorous disagreement with President Clark’s lecture “Our Dwindling Sovereignty” at the University of Utah. Elder Lee’s response was, “Yes, I suppose it would be difficult for a pigmy to get the viewpoint of a giant. When I go to hear [a] world authority . . . , I go to learn and not to criticize.”<sup>18</sup>

#### OTHER GIANTS

There are other giants of the law upon whose shoulders I have stood—Presidents Marion G. Romney, Henry D. Moyle, Howard W. Hunter, and James E. Faust.

The saintly Abraham Lincoln said that “lawyers should discourage litigation. Persuade [your] clients to compromise. The lawyer who is a peacemaker can become a good man. There will be business enough. . . . Never stir up litigation. If you do, a worse man can scarcely be found.”<sup>19</sup>

John K. Edmunds had a distinguished legal career. He served as a stake president in Chicago. David M. Kennedy, later secretary of the treasury, was his counselor. Brother Edmunds later served as president of the Salt Lake Temple.

“I know the man

Lumiere  
SALT LAKE

Brother and Sister  
J. Reuben Clark Jr.  
Sincerely Your Friend  
Nehemiah J. Frank  
May 27/33.



# the Lord wants me to have, and he is not ready yet.”

He told me that a widow once came to him for help on a property matter. When he completed the papers and gave them to her, she asked, “How much do I owe you?”

He looked at her and said, “Why don’t you pay me what you think it’s worth.”

Relieved, she got out her coin purse and produced a quarter and put it in his hand.

He told me, “I looked at the quarter and looked at her. Then I got out my coin purse and gave her ten cents change.”

Only a wicked lawyer would take advantage of a widow or orphans or anyone else.

In Liberty Jail, Erastus Snow, who probably could not afford legal counsel, asked Joseph Smith what he should do:

*Brother Joseph told him to plead his own case.*

*“But,” said Brother Snow, “I do not understand the law.”*

*Brother Joseph asked him if he did not understand justice; he thought he did.*

*“Well,” said Brother Joseph, “go and plead for justice as bard as you can, and quote Blackstone and other authors now and then, and they will take it all for law.”<sup>20</sup>*

## A C H A R G E

Those giants I named, like you, had something that I do not have—a degree in law. With this credential comes obligation.

You who hold the priesthood must be exemplars above reproach.

And I charge each of you lawyers and judges and put you on alert: These are days of great spiritual danger for this people. The world is spiraling downward at an ever-quickenning pace. I am sorry to tell you that it will not get better.

I know of nothing in the history of the Church or in the history of the world to compare with our present circumstances. Nothing happened in Sodom and Gomorrah which exceeds the wickedness and depravity which surrounds us now.

Satan uses every intrigue to disrupt the family. The sacred relationship between man and woman, husband and wife, through which mortal bodies are conceived and life is

passed from one generation to the next generation, is being showered with filth.

Profanity, vulgarity, blasphemy, and pornography are broadcast into the homes and minds of the innocent. Unspeakable wickedness, perversion, and abuse—now even exempting little children—once hidden in dark places, now seeks protection from courts and judges.

The Lord needs you who are trained in the law. You can do for this people what others cannot do. We should not need to go beyond the members of the Church to find superior legal counsel.

## A C A U T I O N

Now I caution you, as President John Taylor warned James Moyle and as Joseph Smith warned Stephen A. Douglas at the pinnacle of his political triumph, “If ever you turn your hand against . . . the Latter-day Saints, you will feel the weight of the hand of Almighty upon you.”<sup>21</sup>

We must look to you for legal counsel. You have, or should have, the spirit of discernment. It was given you when you had conferred upon you the gift of the Holy Ghost.

You must locate where the snares are hidden and help guide our footsteps around them.

## M O R A L L Y M I X E D - U P W O R L D

You face a much different world than did President Clark. The sins of Sodom and Gomorrah were localized. They are now spread across the world, wherever the Church is. The first line of defense—the home—is crumbling. Surely you can see what the adversary is about.

## T H E P R O P H E T S H A V E W A R N E D

We are now exactly where the prophets warned we would be.

Paul prophesied word by word and phrase by phrase, describing things exactly as they are now. I will quote from Paul’s prophecy and check the words that fit our society:

*This know also, that in the last days perilous times shall come.*

*For men shall be lovers of their own selves—*

*Check!*

*covetous—Check!*

*boasters—Check!*

*proud—Check!*

*blasphemers—Check!*

*disobedient to parents—Check! Check!*

*unbankful—Check!*

*unboly—Check!*

*Without natural affection—Check! Check!*

*trucebreakers—Check!*

*false accusers—Check!*

*incontinent—Check!*

*fierce—Check!*

*despisers of those that are good—Check!*

*Traitors—Check!*

*beady—Check!*

*highminded—Check!*

*lovers of pleasures more than lovers of God—*

*Check! Check!*

*Having a form of godliness, but denying the power thereof: from such turn away.*

*For of this sort are they which creep into houses, and lead captive silly women laden with sins, led away with divers lusts,*

*Ever learning, and never able to come to the knowledge of the truth. (2 Timothy 3:1–7; emphasis added)*

Recently Judge Robert H. Bork said:

*Judicial invention of new and previously unheard-of rights accelerated over the past half-century and has now reached warp speed. It is not just Grutter’s permission to discriminate against white males and Lawrence’s creation of a right to homosexual sodomy. The Court has created rights to televised sexual acts and computer-simulated child pornography and, in direct contradiction of the historical evidence, has continued its almost frenzied hostility to religion. . . .*

*In these and other judgments, the Court is shrinking the area of self-government without any legitimate authority to do so, in the Constitution or elsewhere. In the process it is revising the moral and cultural life of the nation.”<sup>22</sup>*

Once, with other members of a city council, we met in the office of the city





President J. Reuben Clark Jr. visits with Presidents Heber J. Grant and David O. McKay. Clark served as a counselor to each, as well as to President George Albert Smith.



President Clark in his library at 80 D Street in Salt Lake City.

attorney. He pointed to a wall with law books and said, “Gentlemen, they are just like a violin. I can play any tune on them you are willing to pay for.” I thought there was something not right about that.

The Lord Himself, strongly condemning the lawyers, scribes, and Pharisees, said: “Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers” (Luke 11:46).

From the writings of the Prophet Alma:

*These lawyers were learned in all the arts and cunning of the people; . . .*

*[The lawyers] began to question Amulek, that thereby they might make him cross his words, or contradict the words which he should speak. . . .*

*They knew not that Amulek could know of their designs. . . . He perceived their thoughts, and he said unto them: O ye wicked and perverse generation, ye lawyers and hypocrites, for ye are laying the foundations of the devil; for ye are laying traps and snares to catch the holy ones of God. . . .*

*And now behold, I say unto you, that the foundation of the destruction of this people is beginning to be laid by the unrighteousness of your lawyers and your judges. (Alma 10:15–17, 27)*

Nephi, son of Helaman, described what happened when the Gadiantons took over the lawyers and the judges:

“Condemning the righteous because of their righteousness; letting the guilty and the wicked go unpunished because of their money” (Helaman 7:5).

You have heard of the courageous lawyer who, having been fined fifty dollars for contempt of court, replied, “It is an honest debt, Your Honor, and I shall gladly pay it.”

Lawyers and judges and even the sacred institution of the jury are being tarnished. When one considers some of the high-profile verdicts, one could believe this conversation:

*Judge: “Ladies and gentlemen of the jury, have you reached your verdict?”*

*Jury: “We have, Your Honor. We find the defendant innocent by reason of insanity.”*

*Judge: “What? All twelve of you?”*

When Moroni was translating the twenty-four gold plates, he interrupted his narrative to speak directly to us in our day. He told of the Gadiantons and their bands (in our day we would call them gangs):

*Wherefore, O ye Gentiles [that is us], it is wisdom in God that these things should be shown unto you, that thereby ye may repent of your sins, and suffer not that these murderous combinations shall get above you, . . .*

[He then warned us in unmistakable plainness]: *Wherefore, the Lord commandeth*

*you, when ye shall see these things come among you that ye shall awake to a sense of your awful situation, because of this secret combination which shall be among you; . . .*

*Wherefore, I, Moroni, am commanded to write these things that evil may be done away, and that the time may come that Satan may have no power upon the hearts of the children of men, but that they may be persuaded to do good continually, that they may come unto the fountain of all righteousness and be saved. (Ether 8:23–24, 26)*

When the Saints in Missouri were suffering great persecutions, the Lord said that the Constitution of the United States was given

*that every man may act in doctrine and principle pertaining to futurity, according to the moral agency which I have given unto him. [Notice that it does not say free agency, it says moral agency. The agency we have is a moral agency.] . . .*

*For this purpose have I established the Constitution of this land, by the hands of wise men whom I raised up unto this very purpose, and redeemed the land by the shedding of blood. (D&C 101:78, 80; emphasis added)*

The present major political debate centers on values and morals and the Constitution.

There occurs from time to time reference to the Constitution hanging by a thread. President Brigham Young said:

*The general Constitution of our country is good, and a wholesome government could be framed upon it; for it was dictated by the invisible operations of the Almighty. . . .*

*Will the Constitution be destroyed? No. It will be held inviolate by this people; and as Joseph Smith said “the time will come when the destiny of this nation will hang upon a single thread, and at this critical juncture, this people will step forth and save it from the threatened destruction.” It will be so.<sup>23</sup>*

I do not know when that day will come or how it will come to pass. I feel sure that when it does come to pass, among those who will step forward from among this people will be men who hold the Holy Priesthood and who carry as credentials a bachelor or doctor of law degree. And women, also, of honor. And there will be judges as well.

Others from the world outside the Church will come, as Colonel Thomas Kane did, and bring with them their knowledge of the law to protect this people.

We may one day stand alone, but we will not change or lower our standards or change our course.

#### WHAT WILL YOU DO WITH HIS NAME?

Near the end of his life, President Clark spoke at a dinner at Brigham Young University. I sat next to him. We steadied him as he made his way slowly and laboriously down the steps to his car and drove away into the night. That was the last time I saw him.

The funeral of President J. Reuben Clark Jr. was the first General Authority funeral I attended. South Temple was blocked off between State Street and West Temple. The General Authorities assembled in front of the Church Administration Building. There were thirty-eight of us then. With measured steps, we followed the hearse down the center of the street.

The solemn procession moved through the south gate of Temple Square and around to the northwest door of the Tabernacle. There we formed an honor guard, half on each side of the door, and stood at attention while the casket bearing President Clark and his family passed between us.

I ask you who belong to the J. Reuben Clark Law Society, What *will* you do with his name? It is very certain that one day you will be accountable to President Clark.

And it is equally certain that you members of The Church of Jesus Christ of Latter-day Saints will be accountable for what you have done with the Lord’s name.

I wonder if you who are now lawyers or you who are students of the law know how much you are needed as defenders of the faith. Be willing to give of your time and of your means and your expertise to the building up of the Church and the kingdom of God and the establishment of Zion, which we are under covenant to do—not just to the Church as an institution, but to members and ordinary people who need your professional protection.

#### ANOTHER TESTIMONIAL DINNER

I told you about the dinner honoring J. Reuben Clark in Beverly Hills, California. There was another dinner held at the Waldorf-Astoria in New York City. It was a tribute to President J. Reuben Clark on his retirement from the board of the Equitable Life Assurance Society. Elder Harold B. Lee was there to succeed him on the board.

Elder Lee told me that prior to the event President Clark called him to his hotel room. He found President Clark sitting, leaning on his cane, pensive and unusually nervous. He wanted to inspect Brother Lee’s formal dress to see that his cummerbund was just right.

Imagine those assembled, the great men of the world—cabinet ministers, leaders in business and government—all of different faiths. President Clark and Elder Lee were the only two members of the Church present.

President Clark began his valedictory by addressing them as “my brethren.” He taught them about the Lord Jesus Christ and concluded with his fervent testimony.

I conclude with my fervent testimony and invoke a blessing upon you who are lawyers and judges and who have great power to defend this people.

I invoke the blessings of our Heavenly Father upon you in your studies, in your practice, and more particularly in your home and in your family, that the Spirit of the Lord and the spirit of righteousness will be with you.

I pray that you can take justice and mercy and find a balance in them and fix them firmly with absolute integrity, in the name of Jesus Christ, amen.

#### NOTES

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- ② J. Reuben Clark Jr., “Reflective Speculation,” address given at Seminary and Institute Teachers Summer Session, 21 June 1954.
- ③ *Sharing the Gospel with Others*, Preston Nibley, comp. [Salt Lake City: Deseret Book Co., 1948], 110–12.
- ④ *Journal of Joshua Clark*, vol. 12, 25 Mar. 1886.
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- ⑥ Gordon B. Hinckley, *James Henry Moyle: The Story of a Distinguished American and an Honored Churchman* [Salt Lake City: Deseret Book Co., 1951], 130–33.
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- ⑰ Harold B. Lee, “President J. Reuben Clark, Jr.: An Appreciation on His Ninetieth Birthday,” *Improvement Era*, Sept. 1961, 632.
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- ⑲ Abraham Lincoln, notes for a law lecture, 1 July 1850.
- ⑳ *History of the Church*, 3:258.
- ㉑ *History of the Church*, 5:394.
- ㉒ “Has the Supreme Court Gone Too Far?” *Commentary*, vol. 116, no. 3 [Oct. 2003], 25–48.
- ㉓ Brigham Young in *Journal History*, 4 July 1854.

#### PHOTO CREDITS

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How do we practice  
Our Religion  
while we practice?

by Thomas B. Griffith



# Last Year

I WAS ASKED TO SPEAK AT A J. REUBEN CLARK LAW SOCIETY EVENT IN PORTLAND, OREGON, AS A LAST-minute fill-in replacement for Senator Gordon Smith, who couldn't attend because he was participating in the senate's debate over the Iraq War resolution. All agreed that his absence was excused. I knew that the audience would be bitterly disappointed to settle for me in the place of Senator Smith, and, wanting to lessen their disappointment to the extent that I could, I decided that I would take a stab at the topic he had chosen for the day, "How Do We Practice Our Religion While We Practice?" (Besides, I have been unable to find anyone who still wants to hear about the impeachment trial of President Clinton.) I found the exercise of addressing that topic to be helpful to me. I hope that you find it helpful to you.

Senator Smith's question is, I believe, an acknowledgment that certain endeavors in this life entail greater spiritual risks than do others. Now, I realize that there are spiritual risks in all human activities, including church work. No less an authority than Screwtape himself observed, "Nowhere do we tempt so successfully as on the very steps of the altar" (C. S. Lewis, "Screwtape Proposes a Toast," *The Screwtape Letters* [New York: Macmillan, 1961], 172). Remember the Lord's warning to us in D&C 121 about the unrighteous use of the priesthood: "We have learned by *sad experience* that it is the nature and disposition of *almost all men* . . . to exercise unrighteous dominion" (D&C 121:39, emphasis added). Why, you may be surprised to learn that there are even spiritual risks that come in working at BYU!

It doesn't seem to me to be a very controversial proposition that *some* professional activities expose our souls to *greater* risks than do others. I believe the Savior was warning us of this fact of life when He said, "I tell you the truth, it is hard for a rich man to enter the kingdom of heaven. . . . [I]t is easier for a camel to go through the eye of a needle than for a rich man to enter the kingdom of God" (Matthew 19: 23–24 NIV). Thomas Jefferson was certain that farmers, by virtue of their unique economic activity, were better pre-

pared than any of us here today to contribute in a positive way to a republican form of government. (See, e.g., Thomas Jefferson, *Notes on the State of Virginia*, "Query XIX" [1787]: "Those who labour in the earth are the chosen people of God, if ever he had a chosen people, whose breasts he has made his peculiar deposit for substantial and genuine virtue. . . . The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body. It is the manners and spirit of a people which preserve a republic in vigour. A degeneracy in these is a canker which soon eats to the heart of its laws and constitution.")

Even our own church leaders have acknowledged that some careers lend themselves more easily to the religious life than do others. I remember attending the sessions of general conference at which James E. Faust and Grant Bangerter were first called to be General Authorities. Elder Faust noted that prior to his call, he had been a lawyer. He then remarked that since his call, he had been repenting of that (James E. Faust, "To Become One of the Fishers," *Ensign*, January 1973, 81). Elder Bangerter, by contrast, noted that prior to his call, he had been a carpenter. For some reason, he said, he had not felt quite the same need to repent (William Grant Bangerter, "The People Who Influence Us," *Ensign*, May 1975, 39).

In *A Man for All Seasons*, his play based on the life of St. Thomas More, the patron saint of lawyers and politicians, Robert Bolt contrasts the public life of Thomas More, a Christ-figure who is a lawyer (I know that must require a significant suspension of disbelief for many of you), with that of Richard Rich, a pathetic Judas-figure. At the opening of the play, we are allowed to overhear a spirited discussion at the house of More in Chelsea. More's house had become a center of the New Learning taking hold in 16th-century England. Rich is a hanger-on in this distinguished company, envious of the prominence of More, who is the most respected man in England and is soon to become Henry VIII's lord chancellor—the highest appointed office in the realm. Forgive my inadequate attempts at acting.

RICH: (*Enthusiastically pursuing an argument.*) But every man has his price.

MORE: No, no!

RICH: But, yes! In money, too.

MORE: (*With gentle impatience.*) No, no, no!

RICH: Or pleasure. Titles, women, bricks and mortar, there's always something.

MORE: Childish.

[Robert Bolt, *A Man for All Seasons* 4 (1962)]

Rich then complains that despite his friendship with More he has been unable to find a political position. He wants More's recommendation, which he is confident will be the key to unlocking the door that is blocking his ascent to power. More, knowing Rich to be a weak, self-centered man, refuses to recommend him to government office. Instead:

MORE: The Dean of St. Paul's offers you a post; with a house, a servant, and fifty pounds a year.

RICH: What? What post?

MORE: At the new school.

RICH: (*Bitterly disappointed.*) A teacher!

MORE: A man should go where he won't be tempted. . . . Why not be a teacher? You'd be a fine teacher. Perhaps—a great one.

RICH: And if I was who would know it?

MORE: You, your pupils, your friends. God—not a bad public, that. Oh, and a *quiet* life.

[*Id.* at 5, 6]

Rich rejects More's suggestion that he be a teacher, and by the end of the play he loses his soul. Rich yearns for worldly power and prestige. Because More will not aid that pursuit, Rich turns to More's enemy Thomas Cromwell, secretary to the king. Cromwell willingly appoints Rich to a series of government positions in exchange for Rich's undivided loyalty. As you know, More's refusal to support Henry's declaration of himself as head of the church in England—a stand born of his conviction that the Pope was the rightful successor to St. Peter as the head of the church—cost him his life. And it was the perjured testimony of Richard Rich, elicited by Cromwell at More's trial for treason, that led to his death.

Upon hearing Rich's perjury at that trial, a disheartened More knows that his fate has been sealed. Exercising his right to examine the witness, however, More responds:

MORE: I have one question to ask the witness. That's a chain of office you are wearing. (*Rich reluctantly faces More.*) May I see it? (*Norfolk, the presiding officer at the trial, motions Rich to approach. More examines the medallion.*) The red dragon. (*To Cromwell.*) What's this? CROMWELL: Sir Richard is appointed Attorney General for Wales. MORE: (*Looking into Rich's face; with pain and amusement.*) For Wales? Why, Richard, it profits a man nothing to give his soul for the whole world—but for Wales! [*Id.* at 90, 91]

Now, for those of us who have rejected the advice of Thomas More and have gone places in our careers where we will be tempted, places worth far less than Wales (I'm of Welch ancestry, by the way), what are we to do to save our souls? I think that is a more blunt way to address the question posed by Senator Smith.

May I suggest that the answer to our dilemma—and by the way, I believe it is a dilemma—lies within a familiar passage of scripture describing an event from the last week of the mortal ministry of Christ, which may, by its very familiarity to us, have lost some power to guide our professional lives. Aptly, the answer to our dilemma comes in the Savior's response to a hostile question put to him by a lawyer:

*Then one of them, which was a lawyer, asked him a question, [testing] him, and saying,*

*Master, which is the great commandment in the law?*

*Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind.*

*This is the first and great commandment.*

*And the second is like unto it, Thou shalt love thy neighbour as thyself.*

*On these two commandments hang all the law and the prophets.* [Matthew 22: 35–40 KJV]

Love God. Love your neighbor as yourself. *These* are the templates by which we should measure our professional conduct. This is how we are to practice our religion while we practice our professions. Is that unrealistic? It is difficult, to be sure, but it is only unrealistic if we have bought into Satan's fictions about what is real and unreal. How does one go about living one's



professional life out of a love of God and neighbor—something we are not only called to do but commanded to do?

First, we must reject the tendency to place our professional and religious lives in separate compartments. The “at-one-ment” of Christ is intended to bring unity and wholeness to our relationship with God, to our fellow beings, and within ourselves. Years ago, as I was about to graduate from BYU with a bachelor's degree, I attended a stake conference in the Provo Tabernacle. In a few months I would be entering law school at the University of Virginia, but I was by no means certain what I wanted to do for my life's work. I was ready to be taught. Elder Eyring teaches that the primary way God speaks to us is through speakers at church (Henry B. Eyring, “Ears to Hear,” in Conference Report, April 7, 1985; or *Ensign*, May 1985, 76). Although we can each identify obvious limits to that principle, this was an occasion when I believe the Lord was speaking to me. Gene Dalton, who was on the faculty of BYU's business school, spoke as a member of our stake presidency. President Dalton told the story of an Italian immigrant to America who, when he passed through Ellis Island in the early 20th century, recorded on his papers under the box marked “Occupation”: “I am a servant of God. I mend shoes.”

That anecdote reminds me of what Dorothy Sayers, the Catholic apologist, translator of Dante, and mystery novelist, wrote:

*The church's approach to an intelligent carpenter is usually confined to exhorting him not to be drunk and disorderly in his leisure hours, and to come to church on Sundays. What the church should be telling him is this: that the very first demand that his religion makes upon him is that he should make good tables.*

*Church by all means, and decent forms of amusement, certainly—but what use is all that if in the very center of his life and occupation he is insulting God with bad carpentry? No crooked table legs or ill-fitting drawers ever, I dare swear, came out of the carpenter's shop at Nazareth. Nor, if they did, could anyone believe that they were made by the same hand that made Heaven and earth. No piety in the worker will compensate for work that is not true to itself; for any work that is untrue to its own technique is a living lie.* [Dorothy L. Sayers, *Creed or Chaos?*, (New York: Harcourt, Brace, 1949), 56–57]

Now, that is a tall order, and it makes me feel about the same way that I feel whenever I hear the oft-used John Taylor quote about being accountable for those I might have helped had I been more diligent in my callings. Nevertheless, I believe that Sayers is correct when she recognizes that our professional work cannot be separated from our religious life. (By the way, I believe that President Taylor is also correct. Although I hope that the words of Mother Teresa quoted in general conference several years ago are also correct: “I know only two





things about God's judgment. First, it will be absolutely fair. Second, it will be filled with wonderful surprises.") As Latter-day Saints, we understand that what Sayers is describing is part of the law of consecration. C. S. Lewis described that law this way:

*Christ says "Give me All. I don't want so much of your time and so much of your money and so much of your work: I want You. I have not come to torment your natural self, but to kill it. No half-measures are any good. . . ."*

*. . . The terrible thing, the almost impossible thing, is to hand over your whole self—all your wishes and precautions—to Christ. But it is far easier than what we are all trying to do instead. For what we are trying to do is to remain what we call "ourselves," to keep personal happiness as our great aim in life, and yet at the same time be "good." We are all trying to let our mind and heart go their own way—cent[er]ed on money or pleasure or ambition—and hoping, in spite of this, to behave honestly and chastely and humbly. And that is exactly what Christ warned us you could not do. [C. S. Lewis, *Mere Christianity* (New York: Macmillan, 1943), 167–68]*

A modern day apostle of the Lord Jesus Christ, Elder Boyd K. Packer, described the commitment he made to the law of consecration early in his life:

*I knew what agency was and knew how important it was to be independent, to be free. I somehow knew there was one thing the Lord would never take from me, and that was my free agency. I would not surrender my agency to any being but to Him! I determined that I would give Him the one thing that He would never take—my agency. I decided, by myself, that from that time on I would do things His way.*

*That was a great trial for me, for I thought I was giving away the most precious thing I possessed. I was not wise enough in my youth to know that because I exercised my agency and decided myself, I was not losing it. It was strengthened! [Boyd K. Packer, "Spiritual Crocodiles," *New Era*, January–February 1981, 29; emphasis in original]*

Consecration is a lofty goal and I wish that I could tell you from my own personal experience how it may be attained. But I cannot. Still, I am convinced that unless we have that law firmly fixed in our mind as a

principle by which we are *currently* bound, we will look short of the mark, cf. Jacob 4:4, and our professional lives will work at cross-purposes with our religious lives. In other words, we will not be practicing our religion while we practice our vocations.

But how do we live the law of consecration here and now in this world? Do you remember how Elder Maxwell has described the frustration of following celestial traffic signs in telesstial traffic jams? (Neal A. Maxwell, “Notwithstanding My Weakness,”

like most of us here, chose the life of business, politics, and the law. (The educators among us have chosen the better part, are immune from all weakness, and don’t need a lecture from me. Rather, I should be learning from them.) Yet More is, in my view, only a shade behind King Benjamin as a role model for the nonclerics and the nonscholars among us. More was a devout churchman whose piety was genuine. Each day he would spend much time in prayer, devotion, and the contemplative study of the scriptures. (He wore a hair shirt, too, but I wouldn’t recommend that.) More was a devoted family man who held daily devotionals and taught

*To his clients [More] never failed to give advice that was wise and straightforward, always looking to their interests rather than to his own. [Remember President Faust’s conference address from the October 2002 general conference, “What’s in It for Me?”] In most cases he used his best endeavors to get the litigants to come to terms. If he was unsuccessful in this, he would then show them how to carry on the action at least expense. He was so honorable and painstaking that he never accepted any case until he had first examined the whole matter thoroughly and satisfied himself of its justice. It was all the same whether those who came to him were his friends or strangers . . . : his first warning was ever that they should not in a single detail turn aside from the truth. Then he would say: “If your case is as you have stated it, it seems to me that you will win.” But if they had not justice on their side, he would tell them so plainly, and beg them to give up the case, saying that it was not right either for him or for them to go on with it. But if they refused to hear him, he would refer them to other lawyers, himself giving them no further assistance. [Quoted in Gerard B. Wegemer, *Thomas More: A Portrait of Courage*, at 51, 52 (1995)]*

A prayer he composed for lawyers captures the essence of his spiritual approach to his vocation, a vocation that he knew had power to do great good and great evil. “Lord, grant that I may be able in argument, accurate in analysis, strict in study, candid with clients, and honest with adversaries. Sit with me at my desk and listen with me to my client’s complaints, read with me in my library, and stand beside me in court, so that today I shall not, in order to win a point, lose my soul” (quoted in Ave Maria School of Law Applicant Information booklet, 2003).

In all these ways, we can and should emulate Thomas More, but there is one virtue in particular that made him the man for all seasons that he was. It is this virtue I believe is central to our effort to consecrate our professional lives to the Lord—to practice our religion while we practice our vocation. From his earliest days as an adult, Thomas More believed that the most effective way to put himself in a frame of mind where he could resist the temptations attendant to his profession was, in his own

**L**ord, grant that I may  
be able in argument,  
accurate in analysis,  
strict in study, candid with clients,  
and honest with adversaries. . . .

so that today I shall not,  
in order to win a point,  
lose my soul.

*Ensign*, November 1976, 12). Aren’t our careers the ultimate examples of telesstial traffic jams? I believe there is an important lesson to be learned from the life of Thomas More. Now, as you have already recognized, I am of the view that there are many lessons to be learned from More’s life, and I would heartily recommend to any of you to learn as much as you can about this man. In my estimation, the best biography of More was published in 1999. The author is Peter Ackroyd. His book is titled *The Life of Thomas More* [hold up book]. I own no stock in the publisher; nor do I have any relationship with the author.

More is fascinating for our topic because, unlike his good friend and fellow Christian humanist Erasmus, More rejected the life of the cleric and the life of the scholar, both of which Erasmus estimated to be more suitable to More’s deep spirituality. Instead, More,

his children (five daughters and a son) virtue and the liberal arts. By the way, the education of his daughters was of equal priority with that of his son. His daughter Margaret was known throughout England as the most erudite woman of her day. More was widely respected as one of the finest lawyers of his time. Listen to this description of More’s approach to his profession, supplied by one of his biographers. Although it is not the ultimate lesson from his life that will help answer Senator Smith’s challenge to us, it is such a remarkable account that I couldn’t resist including it in my remarks:

words, “to consider how Christ, the Lord of sovereign power, Humbled Himself for us unto the cross.” “Christ’s ineffable Passion,” More wrote, is “a strong defense against all adversity” (*id.* 25 [quoting from one of the earliest of More’s works, *The Life of John Picus*, in *English Works of Thomas More*, 360]).

In the film version of *A Man for All Seasons*, there is a poignant scene in which a physically spent Thomas More, dressed only in a tattered monklike robe, is kneeling in prayer in an anteroom adjacent to the courtroom where he is about to be tried for treason. He has spent more than a year imprisoned in the Tower of London. If you turn up the sound on your TV set and listen very carefully, you can hear More utter a prayer that includes the phrase “Sweet Jesus.” This private and soulful prayer before his public trial and execution reminds us of the Savior’s private and soulful prayer in Gethsemane before His public trial and execution. That scene in the film is an artist’s version of history. It is based, however, on good history, for in the final months of his life, during his imprisonment in the Tower, More was able to pay wholehearted attention to the topic that motivated him throughout his life, and it is the topic, I believe, that will help you and me most as we try to bring all areas of our lives—even our professions—under the Savior’s charge to love God and love neighbor as self.

During his imprisonment in the Tower, Thomas More wrote *De Tristitia Christi*, “a . . . meditation upon the ‘sadness’ of Christ; it is a commentary” upon the New Testament account of Christ’s suffering in Gethsemane (Ackroyd, 380). It was the premise of More’s final work, based upon a lifetime of experience and reflection and a mortal life that had known enormous professional success but was now ending in the Tower of London, that “nothing can contribute more effectively . . . to the implantation of every sort of virtue in the Christian breast than pious and fervent meditation on the successive events of Christ’s Passion” (Wegemer, 208–209).

What does this have to do with Latter-day Saint professionals in the 21st century? Can it possibly be that this Catholic saint from the 16th century has something profound to teach us about how we are to practice our religion while we practice our professions? I think so. To support my argu-

ment, I turn to a lesson from the life of the Prophet Joseph Smith I learned several years ago while teaching an early-morning seminary class in Church history in Leesburg, Virginia. We decided that we would look at Joseph Smith as an Everyman figure. In other words, we would look at the lessons Joseph learned as if they were lessons that each of us needs to learn as we improve our efforts to be disciples of Christ. As we followed the lessons Joseph learned under the tutelage of the Lord, we discovered something quite startling.

Joseph Smith learned a number of lessons that deepened his discipleship from the time of his first visions until he was prepared to organize anew Christ’s church on the earth. The last canonized revelation he received almost immediately prior to organizing the Church in April 1830 is set forth in D&C 19. In verses 18 and 19 of that revelation, the Savior took Joseph Smith (and takes us) back in time to Gethsemane and Calvary—the scenes of the most awe-inspiring events since the Creation. Here the Lord narrates a personal account of the suffering He endured so that we could gain access to the transforming and redemptive power of His atoning sacrifice.

*Which suffering caused myself, even God, the greatest of all, to tremble because of pain, and to bleed at every pore, and to suffer both body and spirit—and would that I might not drink the bitter cup, and shrink—*

*Nevertheless, glory be to the Father, and I partook and finished my preparations unto the children of men.*

It occurred to our class that the Lord was telling the Prophet Joseph (and us) that we should do nothing in His church, or I would argue, in our lives, without bearing in mind what the Father and the Son did for us in Gethsemane and on Calvary. We should carry on our vocations in light of this sobering yet joyous reality.

One of the distinctive features of the Mormon experience, one that is widely noted, has been our emphasis on community building. It shouldn’t surprise you then that one of the icons of our faith is the beehive. To be sure, Mormon communitarianism is, in part at least, a natural reaction to the persecution we have experienced and a pre-

dictable result of our exodus history. But our communitarianism, which was so threatening to 19th- and early-20th-century America, is also a reflection of our belief that although spirituality begins with allowing the effects of Christ’s atoning sacrifice and His awe-inspiring grace to heal the wounds that sin has inflicted upon our broken hearts, its most profound manifestation comes when we work to make the effects of the Atonement of Christ radiate beyond ourselves and our families to unite our communities. There are in the canon of the Restoration powerful insights into the link between the Lord’s Atonement and the imperative to build community. The work of community building is, I believe, the most important spiritual work to which Christians are called. It is a natural outgrowth of what Thomas More called “pious and fervent meditation on the successive events of Christ’s Passion” (Wegemer, 208–209). All other spiritual work is preparatory to this and therefore incomplete without this.

Two stories from the Book of Mormon make this point. The first is the story of the prophet King Benjamin, who worked to unite his people, people deeply divided by culture, language, class, and race. He had tried, without a great measure of success, educational reform, political reform, and legal reform (see Mosiah 1–2). It was only when he taught his divided people of the great unifying power of the at-one-ment of Christ that he was able to help them create a community. It was only by teaching them of their fallen nature—which reveals itself in the very breaches Benjamin was seeking to heal—and the atoning power of Christ’s suffering that Benjamin was able to achieve, for a season at least, unity among his people (see Mosiah 3–6).

The second story describes the post-resurrection ministry of the Risen Lord Jesus Christ to the Book of Mormon people. In that story the Risen Lord descends out of heaven in a foreshadowing of his Second Coming, and the people fall to the earth in worship. After teaching them about His suffering (3 Nephi 11:11), He commands each of the almost 3,000 people to come one by one and feel the wounds in his hands, feet, and side (3 Nephi 11: 14, 15). As one might imagine, this shocking and gruesome experience transformed them. In fact, those who were



confronted by the physical emblems of his suffering form the core of a new Christ-centered society that for the ensuing 200 years is devoid of strife, malevolence, racism, and greed (see 4 Nephi 3, 15–17: “And they had all things common among them; therefore there were not rich and poor, bond and free, but they were all made free, and partakers of the heavenly gift. . . . And it came to pass that there was no contention in the land, because of the love of God which did dwell in the hearts of the people. And there were no envyings, nor strifes, nor tumults, nor whoredoms, nor lyings, nor murders, nor any manner of lasciviousness; and surely there could not be a happier people among all the people who had been created by the hand of God. . . . [T]hey were in one, the children of Christ, and heirs to the kingdom of God”). Significantly, we are asked to do the same each Sunday when we partake of the sacrament of the Lord’s Supper. We are commanded to have physical contact with the emblems of His suffering. The response of the people in 3 Nephi (“they did cry out with one accord, saying: Hosanna! [Save us, now!] Blessed be the name of the Most High God! And they did fall down at the feet of Jesus, and did worship him” [3 Nephi 11:16–17]) becomes the mark by which we measure the depth of our appreciation for the Lord’s sacrifice.

Now, what is so striking to me about these stories is that each highlights the idea that one cannot serve a God who has no personal needs in any other way than by working to unite His children. Each makes clear that it was the shared understanding of Christ’s role as Savior and Redeemer that formed the basis for creating a community. We learn from the story of Adam and Eve that Satan’s primary goal and his chief tactic are to divide God from humanity, Adam from Eve. The most cursory study of human history shows his relentless pursuit of that goal and his effective use of that tactic. Everywhere we see around us the carnage of his work. We are divided by sex, race, class, religion, and nationality, just to name a few. By contrast, the at-one-ment of Christ is a powerful force to overcome those divisions and create a bond of unity among humankind. To build a community that extends beyond family or congregation—and I believe we are compelled by our under-

standing of the Atonement of our Savior and especially those sources to which I just referred to do just that—involves law. Properly understood, then, the vocation of a lawyer is to help build communities founded on the rule of law. By doing so, lawyers are participating in the redeeming work of the atoning power of the Savior at its zenith. To be sure, the working out of the power of the Atonement occurs initially at the intimate level of a sinner realizing her individual need for God’s grace. But it must also ultimately include creating a community based on the rule of law. Near the close of his biography of Thomas More, Peter Ackroyd wrote, “He embodied law all his life, and he died for it” (Ackroyd, 400). That is a challenge worthy of each of us, especially those, like More, who have gained some awareness of the power of the Atonement of the Lord Jesus Christ. We should each, in the words of Thomas More, engage in “pious and fervent meditation on the successive events of Christ’s Passion” (Wegemer, 208–209).

When we do, at least two things will happen. First, we will begin to develop a sense of gratitude to God for the “shock of eternal love” expressed in the Atonement, and that gratitude will humble us before God (Eugene England, “That They Might Not Suffer: The Gift of Atonement,” *Dialogues with Myself*, 90). Second, we will begin to realize that Christ’s Passion was not endured solely for us, but that He suffered what He did because He loved those we encounter everyday in our lives as much as He loves us. In the words of C. S. Lewis,

*It may be possible for each to think too much of his own potential glory hereafter; it is hardly possible for him to think too often or too deeply about that of his neighbour. . . . There are no ordinary people. You have never talked to a mere mortal. . . . Next to the Blessed Sacrament itself, your neighbour is the holiest object presented to your senses. [C. S. Lewis, *The Weight of Glory*, 18–19]*

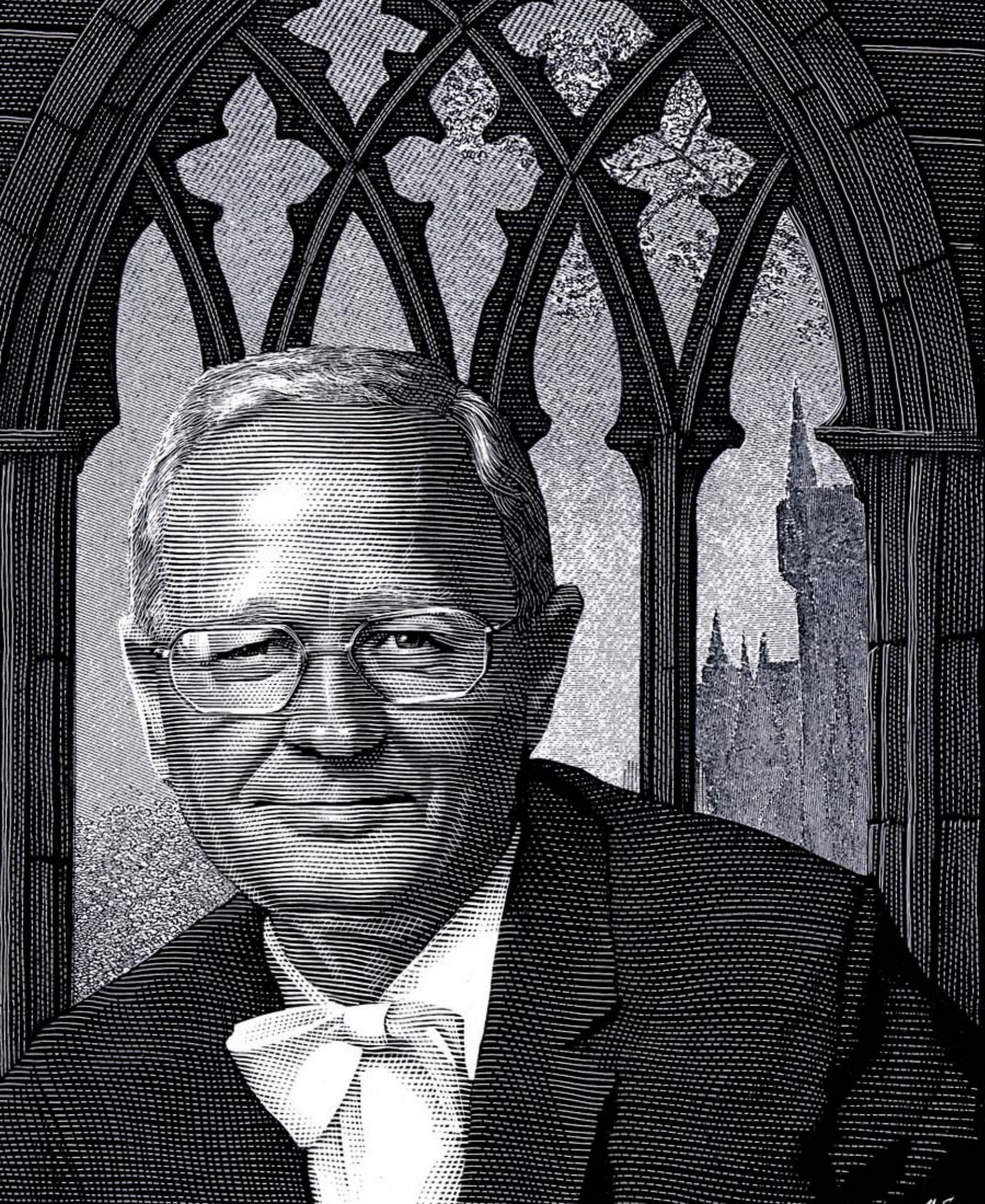
In the name of Jesus Christ, amen.

#### ART CREDITS

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THOMAS B. GRIFFITH HAS BEEN NOMINATED BY PRESIDENT GEORGE W. BUSH TO BE A FEDERAL APPELLATE JUDGE ON THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA. GENERAL COUNSEL AND ASSISTANT TO THE PRESIDENT OF BRIGHAM YOUNG UNIVERSITY SINCE AUGUST 2000, GRIFFITH WAS A VALEDICTORIAN WHEN HE GRADUATED SUMMA CUM LAUDE FROM BYU IN 1978. GRIFFITH SERVED AS A DIRECTOR OF RELIGIOUS EDUCATION FOR THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS BEFORE EARNING A LAW DEGREE IN 1985 AT THE UNIVERSITY OF VIRGINIA SCHOOL OF LAW, WHERE HE WAS EDITOR OF THE VIRGINIA LAW REVIEW. AFTER 10 YEARS IN PRACTICE, HE WAS APPOINTED LEGAL COUNSEL FOR THE U.S. SENATE AND REPRESENTED THE SENATE’S INTERESTS IN THE IMPEACHMENT TRIAL OF PRESIDENT BILL CLINTON. HE IS CURRENTLY SERVING AS PRESIDENT OF THE BYU NINTH STAKE. HE AND HIS WIFE, SUSAN, ARE THE PARENTS OF FIVE DAUGHTERS AND A SON.







# IN HIS OWN



MONTE STEWART CHRONICLES HIS RECENT DAYS AS A  
STUDENT AT OXFORD UNIVERSITY AND SUMMARIZES HIS THESIS

# WORDS



S

ince graduating first in the Law School's first graduating class of 1976, Monte Stewart has defined and redefined his work from clerking for Justice Warren Burger to private practice to mission president to professor to public interest attorney to scholar. Stewart spent September 2003 through June 2004 at Oxford University studying and writing on the judicial redefinition of marriage. He put together the chronology printed here as the basis for an article, but after reviewing it, the editors decided the chronology *was* the article. For more information about Stewart's work, visit [manwomanmarriage.com](http://manwomanmarriage.com).

ILLUSTRATION BY MARK SUMMERS



# PART I



DAYS AT OXFORD

2003

**JANUARY** Knowing that my work for the State of Utah on high-level nuclear waste dumping would be coming to an end in six or eight months, Anne and I consider what and where next. We are thinking a fair amount about returning to Las Vegas, where our family had been greatly blessed from 1981 to 1994. We make trips investigating this possibility. We come to understand that we are to do something different, something that we had never considered before and that had never even remotely entered into any kind of idea of the course of our lives—I was to go back to school (the best school I could get into) to get further education to make myself more useful. Very soon thereafter, it seems clear that the presently most consequential area of the law pertained to the challenge to man/woman marriage and that is the subject I should study. I soon learn that the Harvard and Yale deadline for LLM applicants was December, and nothing else of the right sort is available in America. I am befuddled momentarily, because this does not square with our recent understanding. I sit and think, and Oxford comes to mind. Its deadline is March.

**FEBRUARY AND MARCH** We tell our family and a few others close to us, and word of our decision spreads. Reactions vary. Many are skeptical and seem to view this as manifes-

tation of a midlife crisis. Richard Wilkins and Cole Durham help me prepare my application materials and essays for Oxford. The tentative plan is for Anne and the children to join me in Oxford in January, after Rob's football season is over. (At home, Rob, 16; Emily [fervid Anglophile], 13; Amy, 11; Elizabeth, 9.)

**APRIL** Oxford tells me that, given what I propose doing there, I have applied for the wrong course (a "taught" course); the right one is a "research" course, Masters of Studies in Legal Research (MSt, or, as it is called there orally, MStud). Oxford and its educational system is all such a mystery to me, I am not surprised at my mistake. I tell Oxford folks to deem me an applicant for the MSt course and they kindly agree. The law faculty accepts me quickly, but my going also depends on one of the 35 colleges there accepting me. Ignorant of the colleges, I state no preference and leave the choice of where my dossier goes to the university. The dossier begins circulating.

**MAY** Because of the children's schooling, the family plan moves to the family joining me for June and July 2004 only. I continue wondering how to support the family and pay for the education. Our almost-missionary son volunteers his trust account; moved, we decline. The British Columbia Court

of Appeal holds that Canada's Charter of Rights and Freedoms mandates the redefinition of marriage as the union of any two persons but stays its judgment for over a year to give Parliament an opportunity to speak.

**JUNE** I call Oxford to see what is happening with a college acceptance and learn that several have passed on me. I ask where the dossier is and hear "St. Anne's." Worried (it is getting late), I force myself to take this as a good omen. Two weeks go by with no word. I call again, and the lady is reluctant to answer, leading me to think the news is bad. I press, and she says that St. Anne's had accepted me. I ask when. She says "June 4." That is Anne's birthday. The Ontario Court of Appeal holds that the Charter mandates genderless marriage and refuses to stay its judgment. The British Columbia Court of Appeal then gives its judgment immediate effect also.

**JULY** I figure out a way to finance the plan; I will borrow \$120,000 from my life insurance policy. (Oxford is expensive, and even a frugal family's needs are not small.)

**AUGUST** With the realization that the family probably will not be with me during the school year, I ask St. Anne's for "in college accommodation." Although the application deadline is long past, an opening has just arisen in the college's graduate residence hall. This is a big financial boon, but the hall is coed, and the college says it does not arrange for single-sex accommodation in any of the flats comprising the hall. I call and explain to the hall warden that I'm married and live by certain standards, which I explain. He says, "High standards are good. I've got a vacancy in a miniflat of three rooms, with a good, clean English lad and a good, clean Chinese lad. I'll put you in there."

**SEPTEMBER** I work with Tom Lee in the state's appeals to the Tenth Circuit and the District of Columbia Circuit in the fight against the high-level nuclear waste dump. We go to Albuquerque for the Tenth Circuit oral argument. Just a few days before I leave for England, we finish the D.C. Circuit brief, which I deem the best I have ever been involved with. The Sunday evening before I leave, my home teachers give me a priesthood blessing. Nearly all the night before I

leave, I sit in the living room, immobilized by the thought of leaving my family like this. Very early, Anne drives me to the airport. I shed a lot of tears at the curb. She is a brick. I realize once again that she is one in a million to support me in this, an extraordinary but hard experience in a long series of such. I fly on frequent-flier miles given me by Richard Wilkins. I arrive on a Saturday afternoon, call the bishop, and get directions to Church and the elders' phone number. I call the elders and start a close relationship that lasts with them and their successors all through the year. I show up at Church a stranger and end up teaching the priesthood lesson.

**OCTOBER** In full *sub fusc* (cap, gown, white bow tie, white shirt, dark suit), I matriculate in Christopher Wren's Sheldonian Theatre and begin to develop a sense of Oxford's mysterious but awesome educational traditions and practices. I meet my supervisor, John Eekelaar, and he immediately sends me to a conference of the International Society of Family Law, in Spain. It is my first time on the Continent. At the conference Lynn Wardle is virtually the lone voice for using the law to protect, promote, and prosper man/woman marriage; nearly all the other academics are "progressive," but only one (and he an American) is strident in the discourse. I become a home teacher to two Brazilian sisters with little English (and begin to resurrect my Portuguese) and some new convert families in a working-class area; the Gospel Principles teacher (with the class nearly each week proceeding in English with Portuguese and French translations, with me sometimes also doing the Portuguese translation); and the high priests group leader.

**NOVEMBER** I struggle with my ignorance of non-American legal systems and of much of the literature and discourse surrounding the move to genderless marriage. I read primarily gay and lesbian literature and South African court cases. I labor at times with discouragement, even depression, over the prospects. I narrow my focus to the equality jurisprudence of South Africa, Canada, and the United States in the context of man/woman marriage versus genderless marriage. On the 18th the Massachusetts Supreme Judicial Court issues its 4-3 *Goodridge* decision, holding that the state constitution man-

dates genderless marriage because limiting marriage to a man and a woman is not rational. The next day Richard Wilkins arranges for me to be invited to participate in a Toronto conference on the marriage issue slated for December. I begin working with Terry Warner on a paper for the conference. On the issues of philosophy and anthropology that crop up, I am completely out of my league. The long paper (20,000 words) is much more polemic than scholarly and detached, but I learn the pitfalls of the paper's approach by falling in the pits and come to understand the weaknesses and difficulties of certain arguments by trying to make them.

**DECEMBER** I continue to work on the Toronto paper, thinking that what it contains may be transferable to my thesis. We take a fairly large group of newer members to the London Temple to do baptisms for the dead as a key to retention. After 12 weeks in England, I leave for home by way of Toronto. The conference is small but consists of scholars largely committed to preserving and protecting man/woman marriage, scholars (from the UK, Canada, and America) with extraordinary credentials, professional achievements, and candlepower. I hear ideas that come to play a key role in my thesis. With Richard Wilkins, I meet with a group of Canadian Latter-day Saints, feel

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I WALK FOR SEVERAL MILES ALONG THE OXFORD CANAL AND

THE THAMES. . . . THESE ARE DAYS NEVER TO BE FORGOTTEN.



their sorrowing over their nation's apparent imminent adoption of genderless marriage, and tell them not to despair. There is genuine hope for preserving marriage in Canada as the union of a man and a woman. I return home to Anne and the children.

2004

**JANUARY** I return to Oxford. I suffer bouts of homesickness that at times cause physical pain and remember the Missionary Department's adage that no one ever died of homesickness. I continue to benefit attending and participating in Professors Sandra Fredman's and Christopher McCrudden's comparative human rights seminar. (My thesis is a comparative law piece, an approach that before September I had never touched and was only dimly aware of.) The students are mostly young and breathtakingly bright ("clever," as they say in England) lawyers from countries all around the world. I become the go-to guy on United States Supreme Court cases and lore. I complete my study of the relevant South African, Canadian, and American cases.

**FEBRUARY** By what seems to me a miracle, I encounter some key concepts in the writings of Ronald Dworkin and John Finnis that I see to be of great importance to the marriage issue. These men do jurisprudence. All school year I had felt that the roots of my thesis go into jurisprudence but had never touched the area before and floundered ahead by reading elementary works in the area. Oxford is awash in jurisprudence. I begin attending a seminar led by Joseph Raz and John Finnis. I talk to Professor Finnis about my discovery. He agrees but seems sadly resigned about the prospects for preserving man/woman marriage in Canada. He has a light about him that the other law professors, wonderful as they are, do not. We again take the newer members to the temple for baptisms. With three weeks left in the month and before my departure for home, the District of Columbia Circuit rules against Tom Lee and me (actually against the State of Utah), essentially ignoring in the process our best arguments. I begin writing my thesis, sitting at my computer in my little room, with cases and other materials spread

on a card table and the bed. Key ideas flood in from the first hour. The structure becomes so clear in my mind and the pace of my writing so certain that I am able to predict when I will complete each of the seven chapters. I start writing every day at 8:00 a.m. Late in the afternoon I walk for several miles along the Oxford Canal and the Thames (called the Isis in Oxford). This continues for three weeks. I finish the day before I am to leave. These are days never to be forgotten.

**MARCH AND APRIL** I return home for a long holiday between terms. During the night after my return, another chapter comes clearly into my mind, one based on a distinction in the modes of judging made by Dworkin. I write the chapter in the coming days, applying the distinction to the 4-3

*Goodridge* split. Because of length limitations, the chapter does not become part of the thesis but does become part of the longer article I seek to publish. With hardly even a foggy notion about our future, Anne and I decide that we are to build out our unfinished basement. Most of my time is devoted to this project, especially laying tile. Anne appreciates this work far, far more than any legal work I ever did. On April 22, I leave for England by way of Boston. I visit with an articles editor at the Harvard Law Review about publication of my thesis/article there. It has already gone through two stages of the review process with very good reviews.

**MAY** John Eekelaar thinks highly of my thesis (he thought the Toronto paper was not very good). I finalize the thesis and prepare for my

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*viva* (oral defense of the thesis). John arranges for Jon Herring, a young Oxford family law professor whose lectures I had attended, to be the internal examiner and for Helen Reece, a barrister and professor in London, to be the external examiner. I read Helen's recent book on divorce reform and find language supporting two key concepts in the thesis (so the book is now in two footnotes). Harvard Law Review rejects my article. With Bill Duncan's help, I send it to about three dozen journals in Canada and the United States. At the stake president's direction, I work hard to arrange for all temple-worthy people in the ward to go to the temple on the 18th. My *viva* gets scheduled for late morning on the 18th and cannot be moved. In full *sub fusc*, I go to my *viva*. It is longer than usual and quite intense in a not unfriendly way. The examiners challenge me particularly regarding the social science data that married mother/father child rearing is the optimal mode. After, I catch a ride to the temple with a dear recently returned missionary friend of Nigerian descent. The ward members consider the temple excursion a great success. In the coming days on my own initiative I rewrite the child-rearing chapter, chapter 4, to make it stronger, this in light of the *viva* experience. On the 27th Anne arrives. Before entering my flat, she meets Michael Korsah from the next flat, the PhD (material sciences) student from Ghana we have been fellowshiping for some months, who is now taking the missionary discussions. She is moved when she sees my little room and has an epiphany of my experience this past year.

**JUNE** Anne's and my week together in England is glorious. It is hard saying goodbye to the ward members. The night before we leave, I get an e-mail that the examiners' report is in the Graduate Studies Office. We catch a bus early for Heathrow on the 4th, Anne's birthday, before the GSO opens. I call from the bus. The lady tells me that I am being awarded my degree "with distinction." I had thought that coming down in favor of man/woman marriage would preclude that relatively rare award. The *Canadian Journal of Family Law*, a peer-edited journal, agrees to publish the article in September, before the October 6th oral argument before the Supreme Court of Canada on whether the Charter mandates genderless marriage.

SUMMARIZING THE ARTICLE:  
A JUDICIAL REDEFINITION OF MARRIAGE

# PART II



In both the political and the legal spheres, the genderless marriage war is fought almost entirely on the equality battleground. Accordingly, the key question becomes whether there are any meaningful differences between marriage defined as the union of a man and a woman and marriage defined as the union of any two persons.



# THE LEGAL STAGE IS SET

In the *Goodridge* case in November 2003, the Massachusetts Supreme Judicial Court announced that there were no meaningful differences, and, therefore, the limitation of civil marriage to the union of a man and a woman was “irrational.” (In 1999 the Vermont Supreme Court went almost that far but exercised a touch of self-restraint, allowing the state legislature to provide for civil unions, essentially marriage without the name “marriage.”) Five months before *Goodridge*, the Ontario Court of Appeal had said essentially the same things stated by the Massachusetts court, as had the British Columbia Court of Appeal in May, just a few weeks before the Ontario court spoke. The question of one or more meaningful differences is now before the Supreme Court of Canada, with oral argument set for October 6, and before the courts of South Africa, New Jersey, and California. The question will come before the courts of most American states in the coming months and years, because nearly every state constitution has an equality guarantee.

## *Man/Woman Marriage v. Any Two Persons*

The most obvious difference pertains to procreation. Civil marriage limited to the union of a man and a woman suggests that society is up to something having to do, in some way, with procreation. The four courts (Massachusetts, Ontario, British Columbia, and Vermont) got around this difference with three interrelated tactics. First, they ignored the description (put forward by the defenders of man/woman marriage) of what society was up to with its limitation of marriage to the union of a man and a woman and instead substituted a phony, even silly, argument in its place. The courts cast the argument as one resting on a supposed societal purpose of mandating procreation. Second, the courts shot down this phony argument by saying that this was not a true societal purpose as evidenced by society’s refusal to make procreative intentions, capacities, and performance a requirement of civil marriage. Third, the courts

said in essence that the “true” purpose of civil marriage is a companionate relationship, with respect to which the abilities and needs of a same-sex couple are the same as those of a man and a woman.

Taking the third tactic first (to use Rex Lee’s approach), what the courts did in effect was treat the Constitution (or Charter in Canada) as “enacting” a particular social theory known as the “close [or pure] personal relationship” model of dyadic (two-person) relationships. Under this model as described by Ceres, a relationship is “stripped of any goal or end beyond the intrinsic emotional, psychological, or sexual satisfaction which the relationship brings to the individuals involved. In this new world of ‘relationships,’ marriage is placed on a level playing field with all other long-term sexually intimate relationships.” There are three problems with this. One, in the United States and Canada, although many couples (including married couples) have adopted this model as their own, the majority have not; they adhere to the much broader and richer conception of traditional, conjugal marriage. Two, the model, or theory, although popular in some quarters of the academy, is contested even there, as well as in society generally. Three, at least since Holmes, it has been clear that the “enacting” of a contested social theory under the guise of constitutional interpretation is a bogus judicial endeavor.

Regarding the second tactic (the absence of procreative requirements for man/woman marriage shows a societal lack of interest in marital procreation), the far more persuasive explanation of society’s reticence to inquire into marital procreative intentions and capacities is society’s long-standing aversion to governmental intrusions into the sphere of marital privacy, as witnessed most famously by the 1965 *Griswold v. Connecticut* case on marital use of contraceptives. That persuasive explanation cannot rationally be used to argue that society holds no meaningful interest in procreation.

Which leads to the first tactic (ignoring the real and relevant societal interest at work). The real and relevant interest is a component of what my article refers to as society’s *deep logic of marriage*, a component that the states’ briefs refer to as ‘the government’s interest in “furthering the link



between procreation and child rearing.” The phrase *deep logic of marriage* encompasses the complex of purposes and values that inheres in the social institution of marriage as now experienced in Canadian and American societies. The relevant “procreative” component is a response to two essential realities of man/woman intercourse: its procreative power and its passion. The component’s purpose is understood as the provision of adequate private welfare to children. (The phrase *private welfare* includes not just the provision of physical needs such as food, clothing, and shelter; it encompasses opportunities such as education, play, work, and discipline and intangibles such as love, respect, and security.) Man/woman intercourse, as an act of compelling passion often leading to child bearing, has important implications for society. Societal interests are corroded when child bearing occurs in a setting of inadequate private welfare and are advanced when it occurs in a setting of adequate private welfare. Passion-based procreation militates against the latter and is conducive of the former. That is because passion, not rationality, may well dictate the terms of the encounter. Whereas rationality considers consequences nine months hence and thereafter, passion does not, to society’s detriment.

Hence, what is understood to be a fundamental and originating purpose of marriage: to confine procreative passion to a setting (a social institution, actually) that will assure (to the largest practical extent) that passion’s consequences (children) begin and continue life with adequate private welfare. This purposive component of society’s deep logic of marriage I call the *private welfare purpose*. Although the immediate objects of the protective aspects of the private welfare purpose are the child and the often vulnerable mother, society rationally sees itself as the ultimate beneficiary.

Against this background, what is irrational is most certainly not the societal regulation of marriage as the union of a man and a woman but the conferral of “marital” status on same-sex couples, whose passion is not and simply cannot be procreative.

The courts sensed this problem inhering in their tactic, but their remedial efforts fail. One, they point to same-sex couples getting children by adoption and assistive reproduc-



tive technology. But both of those child-getting approaches presuppose not passion-based child bearing but very deliberative entry into child rearing, a presupposition not logically connected to the private welfare purpose of society’s deep logic of marriage. Two, the *Goodridge* court made a feeble effort to argue that the contemporary availability of contraceptives effectively eliminates the private welfare purpose, but the child-birth data undercuts that effort.

So there is something after all about the man/woman procreative power that renders quite rational indeed society’s use of marriage to regulate the union of a man and a woman and quite irrational indeed to regulate a same-sex relationship.

Another difference, besides that pertaining to procreation, relates to child rearing. Married mother/father child rearing is the optimal child-rearing mode when measured by outcomes beneficial to society, including the child’s physical, mental, and emotional health and development; academic perfor-



mance and levels of attainment; and avoidance of crime and other forms of self- and other-destructive behavior such as drug abuse and high-risk sexual conduct. This quality of married mother/father child-rearing is not seriously contestable in the context of all child-rearing modes (except same-sex parents), and that includes unmarried mother/father, married parent/step-parent, cohabiting parent, single mother, and

single father. It is “contestable” in the same-sex parent context simply because there are a few studies on each side of the argument but no consensus yet. As the Ontario court put it, “[T]he social science research is not capable of establishing the proposition one way or another.” But that court and the other three courts did not say *why* the social science data is inconclusive. It is inconclusive because same-sex parenting is too recent



and therefore insufficiently studied. In other words, it is the very pace of the genderless marriage advocates' political and legal march that leaves contested whether same-sex couple child rearing—like all other modes—is less successful in rearing children from infancy to adulthood than is married mother/father child rearing.

Against this background, the four courts took the rather silly approach of declaring the party not responsible for the uncertainty (the state), rather than the responsible party (the gay and lesbian community), the “loser” exactly because of the existence of the uncertainty. The Ontario court did not remedy this silliness by invoking the notion of a “stereotypical assumption.” The assumption that married mother/father child rearing is the optimal mode—relative to *all* other modes—is premised not on some demeaning view of gay men and lesbians but on the social science data showing the superior outcomes for married mother/father child rearing relative to every other mode where circumstances have allowed adequate study (that is, every other mode except same-sex couple). The four courts' tactic of shifting the “burden of proof” to the state in these circumstances is problematic.

Likewise problematic is their reliance on the adoption argument: The state allows same-sex couples to adopt; therefore the legislature has decreed that same-sex couple child rearing is as beneficial to society as married mother/father child rearing. The short and simple answer is that the state considers and allows adoption only when married mother/father child rearing (the optimal mode) is not, for some reason, an option. The courts' “therefore” is therefore fallacious.

A rational, enlightened legislator could choose to limit marriage to the union of a man and a woman as a means of protecting, preserving, and promoting married mother/father child rearing and its optimal outcomes (for society as well as the child).

In tacit recognition of this last point, the four courts resort to the “no downside” argument: Even conceding that society has good reasons to prefer man/woman marriage, opening marriage to same-sex couples will benefit those couples greatly and will cause no downside to the “vital social institution”

(*Goodridge's* words) of marriage; therefore, with such upside and no downside, it is irrational to continue limiting marriage to the union of a man and a woman. But here the courts wreck most spectacularly. Marriage is a vital social institution, but a social institution is not brick, steel, and glass; rather, it is, in *Ceres's* words, something “constituted by complex webs of social meaning.” Thus marriage, like all social institutions, is changed by alterations in the social or public meanings that in large measure constitute it. Moreover, a social institution supplies to the people who participate in it what they should aim for, dictates what is acceptable or effective for them to do, and teaches how they must relate to other members of the institution and to those on the outside. Thus, fundamental change in the institution first results from change in the public meanings that constitute it and then changes what its members think of themselves and of one another, what they believe to be important, and what they strive to achieve.

*Consequences of Change—Anything but Beneficial*

Profound changes in social conduct are the likely consequence of changing the meaning of marriage from the union of a man and a woman to the union of any two persons, with reason to fear that the changes will be anything but beneficial. To change the core meaning of marriage from the union of a man and a woman (with all the radiating implications of that limitation) to the union of any two persons is to transform profoundly the institution. If it is not immediately transformed, then certainly it will be over time as the new meaning is mandated in texts, in schools, and in many other parts of the public square and voluntarily published by the media and other institutions. Society, especially its children, thereby loses the ability to discern the meanings of the old institution. Humankind's body of knowledge on the nature and operation of social institutions refutes the courts' “no downside” argument.

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PHOTOGRAPHY BY BRADLEY SLADE

THE ESSENCE OF LAWYERING IN AN

A T M O S P H E R E

of

FAITH

by Kevin J Worthen

THIS IS YOUR FIRST FORMAL MEETING AS LAW STUDENTS.

It is my first formal greeting as a dean. All of us may be wondering exactly where we are, where we are headed, and how we got here.

It reminds me somewhat of the fellow who found himself in front of the Pearly Gates. As he started to go in, Peter stopped him and explained that it's not that easy to get into heaven. "You have to have done something good." "Like what?" the man responded. "For example," Peter asked, "were you religious in your life? Did you attend church?" "No," said the man. "Well," Peter asked, "were you generous with your money? Did you give some to the poor?" "No." "Were you a good neighbor? Did you help

them?" "Not really." Peter, now a little exasperated, said, "Look, I'd like to help, but you've got to work with me. Surely, sometime in your life you did something good for someone. Now think!" After a moment the man said, "There was this one time when I helped an old lady. I came out of a store and found her surrounded by a dozen Hell's Angels. They had taken her purse and were shoving her around, taunting and abusing her. I got so mad I threw my bags down, fought through the crowd, and got her purse back. I helped her to her feet and then went up to the biggest, baddest biker and told him how despicable, cowardly,

and mean he was and spat in his face." "Wow," said Peter, "that really is impressive. When did this happen?" "Oh, about two minutes ago," replied the man.<sup>1</sup> Things really can change quickly for us.

As I have tried to learn a little about the role of a dean this summer, I discovered that the first dean in a U.S. university was John Collins Warren, who was appointed dean of the Harvard medical school in 1816.<sup>2</sup> "His primary charge," you will be pleased to know, was "to be friendly and charitable to students."<sup>3</sup> Although the duties of a dean have expanded considerably since that time, I think that initial charge is still in place, and it is as a friend

that I want to visit with you today, a friend who can hopefully provide some helpful perspective as we begin these new phases of our lives together.

You are a remarkably diverse group with a wide variety of experiences and backgrounds, as Dean Pullins has indicated. We appreciate the diversity each of you brings to the Law School. That diversity will enrich your law school experience more than you likely anticipate at this point. I wish to focus, however, not on your differences but on the two features that you all have in common: ☺ You have all chosen to study law, and ☺ you have all chosen to study law at the J. Reuben Clark Law School.





*This  
speech was  
presented  
to the J.  
Reuben  
Clark Law  
School on  
August 18,  
2004.*

here is more to

these seemingly obvious common features than may initially appear. Let me start with the first. You have all chosen to study law. But what does it mean to study law? Some of you may anticipate that the study of law will involve a massive mind meld, that in the course of the next three years the faculty will, through some mysterious process, convey to you all the statutes, cases, and other legal rules you need to instantaneously answer any question a client might put to you. While you will certainly memorize a number of legal principles during the next three years, a brief tour of the library should quickly convince you that you are not going to have time to internalize all that material.

Some may believe that the study of law is principally a research exercise, that it consists of learning how to find the information you need in that massive library. Although research instruction will be part of your legal education, it is only part. And, while important, it is not the central part.

Many if not most of you are ahead of me on this point and already anticipate that sooner or later I will trot out the shopworn phrase commonly invoked on occasions such as this and inform you that the study of law ultimately consists of teaching you to “think like a lawyer.” That comes closer to the truth, but that phrase involves more than may first appear. Moreover, even a more in-depth understanding of that concept does not completely capture the fullness of the study of law.

But let me start with that concept. What does it mean to think like a lawyer? First, let me clarify a couple of things it

does not mean. Contrary to the impression given by the behavior of some lawyers, “[t]hinking like a lawyer does not mean being argumentative and contentious.”<sup>4</sup> As one lawyer noted, “You don’t need three years of law school to learn how to annoy and irritate others.”<sup>5</sup> At the outset, therefore, I implore you not to confuse the untoward actions of some lawyers with the essence of lawyering. While there are times when you need to be zealous in your advocacy, being argumentative and contentious no more makes you a lawyer than shaving your head and wearing Nikes makes you Michael Jordan.

Nor does thinking like a lawyer consist of the ability to use clever rhetoric to take advantage of others. The story is told of a lawyer whose neighbor approached him and asked him how much he charged for his advice. “I charge \$200 for answering three questions,” the lawyer responded. “That’s awfully steep, isn’t it?” the neighbor replied. “Yes it is,” said the lawyer. “Now what’s your third question?” A good joke, perhaps, but not good lawyering. Again, don’t mistake the outward trappings for the essence of the matter. Thinking like a lawyer involves much more than merely being clever.

So, just what does thinking like a lawyer involve? The fact that there is no consensus as to the precise meaning of the term despite its constant use in describing what the study of law is all about<sup>6</sup> is telling in and of itself because it indicates how deep and multifaceted the concept is. However, I believe it is possible to provide a good insight into what is at the heart of thinking like a lawyer at this point and that such a glimpse will be helpful as you start the process of studying law.

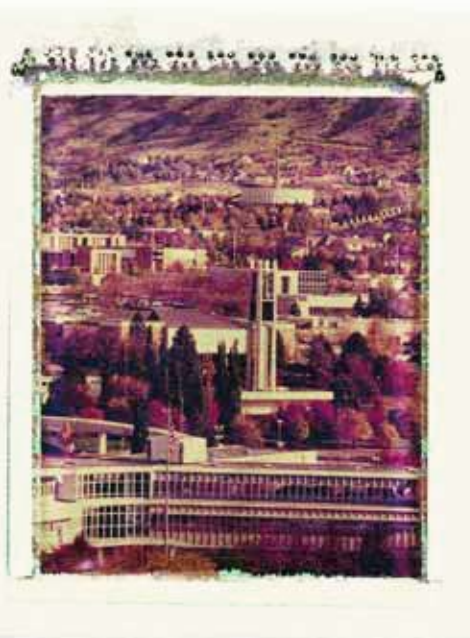
As the words in the phrase suggest, thinking like a lawyer is primarily—though not exclusively—a mental skill, a way of thinking about things that is different from the ways you may have thought about things in the past. It is an analytical method of thinking that requires keen observation, logical reasoning, and a willingness to study matters in depth. It also involves an ability to explain conclusions and reasoning in a logical way.

At the ceremony celebrating the opening of this law school in 1973, then President Dallin Oaks, described part of the analytical and communicative skills that thinking like

a lawyer involves. A person who thinks like a lawyer, he said,

*is a student of meaningful differences among apparently similar situations, and meaningful similarities among situations of no apparent connection. A person who is keen at spotting differences or similarities, discarding the unimportant ones, fastening upon the important ones, and being prepared to explain the reasons for their importance, is well along toward thinking like a lawyer.<sup>7</sup>*

Because it involves a relatively new way of viewing things, thinking like a lawyer can be a challenge. You will be asked to forget some of the habits you have developed and to develop new ones. As one scholar observed,



you will be “expected to learn a new language, a new way of looking at the world, and a new and distinct way of expressing [your] understanding.”<sup>8</sup> That is quite a task—one that can be painful at times. But the results can be exhilarating. Karl Llewellyn expressed the process lyrically with the classic poem “The Bramble Bush.”

*There was a man in our town  
and he was wondrous wise;  
he jumped into a bramble bush  
and scratched out both his eyes—  
and when he saw that he was blind,  
with all his might and main  
he jumped into another one  
and scratched them in again.<sup>9</sup>*

Elder Oaks was a little more direct when he explained:

*Learning to think like a lawyer is rigorous and frustrating. But the objective is worth the effort. The study of law has few equals in disciplining the intellect. Properly conceived and executed, there is nothing mechanical or repetitious about it. It teaches its students a new way to think, and that skill is serviceable beyond the limits of the practice of law.<sup>10</sup>*

While learning to think like a lawyer is the core component of the study of law, particularly the first year of study, the true study of law requires development of characteristics other than analytical and communicative skills. It requires an ability to understand and deeply care about the human condition. True legal education involves more than abstract analytical thinking because, at the end of the day, law has an impact well beyond its abstract conception. Law matters in the real world. In fact, law matters a lot in the real world, at both a macro and an individual level. Because law matters a lot, its study cannot be limited to mere mental abstract exercises.

At a macro level, law matters because it ultimately provides the framework for determining and protecting basic rights and obligations in a society. The status and destiny of nations is shaped by how law is created and implemented. It is, in my opinion, not a coincidence that in the founding of the most stable and productive democracy in the world, “[t]wenty-five of the thirty-six signers of the Declaration of Independence, thirty-one of the fifty-five members of the Constitutional Convention, and thirteen of the first sixteen presidents [of the United States] were lawyers.”<sup>11</sup> The political structure on which we depend in the United States is largely attributable to the efforts of lawyers who not only thought deeply about the law but also understood its impact on the human condition.

The impact of law at a macro level extends well beyond political rights. A study by the Inter-American Development Bank in 2000 determined that of the more than \$10,000 gap between the per capita income of developed countries and that of Latin American countries, approximately \$6,000 was attributable not to demographic

# CREATE AN ENVIRONMENT IN WHICH THE LAWS OF

differences (such as the age of the population) or geographic differences (such as access to transportation and world markets) but to the fact that the public institutions in Latin America—the institutions in which the law plays itself out—were “less effective, predictable and transparent” than those in the developing countries.<sup>12</sup> In other words, if the legal system in Latin America operated differently, each person in those countries could potentially be \$6,000 richer.<sup>13</sup> Law truly matters at a macro level.

Perhaps more important, however, law matters a great deal at an individual level. Because of the ubiquity and complex nature of law in our society, people are required to trust lawyers with their hopes, their dreams, their fortunes, their rights, and sometimes even their lives. How lawyers deal with those precious commodities is of extreme importance to those people. And, as lawyers really learn how to think like lawyers, how important it is that they learn to really care enough about the human condition that they will refine and use those skills to improve others' lives.

Because law matters a lot, it matters a lot that you have chosen to study law. At the dedication of the Law School building in 1975, President Marion G. Romney, who was not noted for hyperbole, stated that one of the reasons he worked to have a law school established here was that he had “long felt that no branch of learning is more important to an individual or society than law.” Given the eternal perspective of its author, that statement is worth considerable contemplation. I repeat: “No branch of learning is more important to an individual or society than law.”

Because the study of law matters a lot, it also matters a lot how you choose to study it. What you learn here in the next three years—not just the rules of law, not just research skills, and not just how to think like a lawyer, but the entire spectrum of law in both its intellectual and human aspects—will matter a lot to a lot of people. Thus, I urge you to study law with full intensity.

I urge you to study law the way that Domingo Catricura did. Domingo was a student in an Indian law class I team-taught at the University of Chile Law School a decade ago. Domingo was in his mid-50s at the time and was one of about 25 non-law students who, along with 30 law students, attended the class. The non-law students were invited to attend the course because they were leaders in various Mapuche communities, the Mapuches being the largest indigenous group in Chile. The course primarily covered the history of Spanish and Chilean interaction with the indigenous peoples of Chile and the first comprehensive Chilean Indian law, which had been enacted the year before. I provided a comparative perspective, contrasting the Chilean experience with that of the United States. As is typical of law classes in a civil law system, the course was highly abstract and theoretical.

Although not a law student and therefore without any hope of obtaining a law degree, Domingo attended the three-hour once-a-week class every week, occasionally making a 9- to 10-hour bus ride from his small native village of Chiuimpilli in southern Chile in order to attend. He was anxious to learn everything he could about law, even that which I attempted to convey about U.S. law in my somewhat rusty Spanish. Although of limited economic means, he purchased a small tape recorder to make sure that he thoroughly understood and remembered everything covered in the class. He also took copious notes, which he frequently reviewed with his two teenage children, who occasionally attended the class with him. He absorbed the information in class and wanted to discuss it after-hours.

For Domingo the theoretical aspects of the law were as important as the practical ones, because he sensed, early on, that in law the former drives the latter. And to him the latter mattered greatly, because he hoped it would help him maintain the cultural integrity of his native village. Thus,

Domingo not only read the materials we covered, he reread them, contemplated them, and wrestled with them. Vivid in my memory is the image of Domingo with his tape recorder and notebooks in hand staying after a three-hour lecture in an unheated room in winter following a long day's travel in order to further discuss the day's subject.

Domingo, like you, chose to study law. He understood what that meant. I hope that you, like Domingo, soon discover that there is more to your choice to study law than you initially thought and that there is a lifetime of understanding and fulfillment ahead of you if you pursue it the right way.

Let me now turn to the second thing you have in common with one another: your decision to study law at this Law School. This fact may also be more significant than you originally thought—at least I hope it becomes more significant over the ensuing years. A little historical perspective may help initiate that developmental process.

The initial suggestion that law be part of the curriculum at a school sponsored by The Church of Jesus Christ of Latter-day Saints was first made in 1897 when Joseph Whitely, a teacher of civics and public law at the University of Utah, proposed a law course for the Provo branch of what was then the Brigham Young Academy.<sup>14</sup> The proposal went nowhere, because, in the words of former Dean Carl Hawkins, “the time was not propitious” for such an endeavor—in part because the school was in shaky financial condition.<sup>15</sup> I suspect, however, that part of the Church's reluctance to commit resources to the study of law had something to do with the suspicion that many early Church leaders shared about lawyers and the impact the study of law would have on those who undertook it.

When, in 1882, a young man named James Henry Moyle approached his stake president, Angus Cannon, and expressed his



# MAN CAN BE LEARNED IN LIGHT OF THE LAWS OF GOD.

desire

to go east

to study law,

President Cannon's

reaction was quite telling.

According to Moyle's biographer,

President Cannon "brought his fist

down on the counter of the office and

said, 'You are going to hell!'"<sup>16</sup> Fortunately

for Moyle, Angus' brother George, who was

a member of the First Presidency, did not

have the same misgivings, and he arranged

for Moyle to meet with John Taylor, who

was then president of the Church. When

Moyle informed President Taylor of his

desire, President Taylor replied that he too

was "opposed to any of our young men

going away to study law." It was, he stated,

"a dangerous profession."<sup>17</sup> When President

Cannon pointed out that the Church would

always have need to employ lawyers,

President Taylor eventually relented and

agreed that it might be "all right for Moyle

to go," but only after warning him in a blessing

that if he did not constantly seek divine

guidance in the endeavor, he would "go

down and wither away."<sup>18</sup> The experience

made clear that at least some of the leaders

of the Church at that time had severe mis-

givings about the study of law. They might

tolerate it as a necessary evil for a few, but

they were not anxious to promote it.

Given that history, the decision of the

Church leaders to establish this law school

at this university, as well as President

Romney's observation about the importance

of the study of law, may take on new signifi-

cance. Clearly something had happened to

change the Church leaders' views about the

study of law in the years between their inter-

change with James Moyle and the establish-

ment of this school. While there were

undoubtedly a number of things that con-

tributed to that change, I believe one of the

most significant was their close association

with J. Reuben Clark Jr., the international

lawyer and former member of the First

Presidency for whom the Law School is

named. Indeed, when explaining why he

cham-

pioned the cause

to establish a law school at

this university, President Romney

(who was also a lawyer) indicated that one of

his main motivations was "to have perpetu-

ated on this campus the memory and influ-

ence" of President Clark.<sup>19</sup>

Thus, we owe more than we may think

to J. Reuben Clark Jr. He not only provided

a name for this law school, he also provided

a model of the positive impact that the

study of law could have on those with deep

religious faith, and he did it in a way that

I believe altered the view of many in the

Church.

J. Reuben Clark was a man of enormous

intellect. When he left Utah to study law at

Columbia University in 1903, Reuben,

stated Elder James E. Talmage, "possessed

the brightest mind ever to leave Utah."<sup>20</sup>

President Clark was also one who loved

learning. "The eighth grade was the highest

level [of schooling] available in [his home-

town of] Grantsville, so after he finished it

once, he repeated [it] two more years

because he wanted" so much to learn.<sup>21</sup> He

also understood that intellectual curiosity

achieved its maximum impact when accom-

panied by hard work. "I have learned," he

said in later years, "that work, more work,

and more work is the only way in which one

may acquire knowledge."<sup>22</sup> The result of this

combination was evident in his law school

years. In the words of one of his biographers:

*When given an assignment, [Reuben] did far more than brief a case or two in the customary fashion; he bounded the errant problem back into its past, rooting through precedents, commentaries, ancillary discussions, and anything else he could find. Then, amid a chaos of notes, citations, and open books piled high, he observed step by step how the matter came into being.<sup>23</sup>*

In other

words, J. Reuben

Clark pursued the study

of law with the same enthusi-

asm and energy that Domingo

Catricura did. Thus, it is not surprising

that President Clark excelled in law school

to such an extent that upon graduation he

was offered a position as assistant solicitor in

the State Department in Washington D.C.,

thus commencing an illustrious career of

public service that culminated in his work as

U.S. ambassador to Mexico some 25 years

later. J. Reuben Clark personified the quali-

ties of intellect, love of learning, and hard

work that make for a successful law student

and lawyer.

Yet, I suspect it is not just the combina-

tion of these qualities but the presence of

others not commonly associated with

lawyers that most impress those who so

fondly remember President Clark. One inci-

dent from his life provides an example.

Many members of the Church are familiar

with President Clark's statement "In the ser-

vice of the Lord, it is not where you serve

but how." Fewer, however, are familiar with

the circumstances under which he made

that statement.

From 1934 to 1951, President Clark was

the First Counselor in the First Presidency

of the Church, serving both Heber J. Grant

and George Albert Smith. In 1951 when

President Smith passed away, President

David O. McKay became President of the

Church, and, as was his right, chose his

counselors. Many were surprised when he

selected Elder Steven L. Richards as First

Counselor and President Clark as Second

Counselor. While they fully supported the

decision, even some of the members of

the Quorum of the Twelve were caught



somewhat off-guard. President Spencer W. Kimball, then a member of the Quorum of the Twelve, wrote in his journal that he was “stunned” when he first heard the news.<sup>24</sup> Given his prominence in both the world and the Church, it may have been possible for President Clark to have been upset at what some perceived to be a “demotion.” Instead, he himself presented the names of the counselors for a sustaining vote, and then, in his subsequent remarks, set forth his famous statement that “in the service of the Lord, it is not where you serve but how.”<sup>25</sup> President Kimball recorded in his journal his view of that particular conference session: “[T]he congregation was breathless . . . [and] there were many tears throughout the congregation. . . . No one could tell if Pres. Clark carried any scars or injuries. . . . No complaint, no self-pity neither in act nor attitude.”<sup>26</sup> President Kimball then added that J. Reuben Clark’s “perfect reactions . . . did more . . . to establish in the minds of this people the true spirit of subjection of the

individual to the good of the work . . . than could be done in thousands of sermons.”<sup>27</sup>

Among other things, J. Reuben Clark was, for those who established this law school, living proof that the study and practice of law at the highest levels does not necessarily lead to arrogance and pride, nor to a weakening of faith or character.

At the dedication of this building in 1975, President Romney expressed a desire that “all faculty and student body members . . . familiarize themselves with and emulate [the] virtues and accomplishments” of J. Reuben Clark.<sup>28</sup> This and other charges given by Elder Oaks and President Romney at the establishment of the Law School and the dedication of this building provide a helpful perspective on the significance of your decision to study law at this law school. I commend those and other “foundational documents”—which will be placed on the Law School Web site shortly—for your reading and discussion in the coming year.



As important as was the impact of the life of J. Reuben Clark on the establishment and direction of this law school, I am convinced that the decision of the leaders of the Church to start this school and to continue to support it so generously did not rest solely on the view that it is okay, or maybe even desirable, for members of the Church to study law at a good law school. Having now become more familiar with the budget figures and the generous subsidy we receive from the Church, I can assure you that if the Church leaders' only goal was to provide a good legal education to 150 students of faith every year, they would have been money ahead simply to provide generous scholarships to deserving individuals, who could then attend one of many outstanding law schools that exist throughout the country. What the founders had in mind, as President Romney stated at the opening ceremony, was the establishment of "an institution"—"an institution in which [students could] . . . 'obtain a knowledge of . . . [the] laws of . . . man' in the light of the 'laws of God.'"<sup>29</sup> What they saw—or at least what I envision now—is not just a group of individuals studying law but a community of scholar saints—or to particularize it somewhat more and to put my individual spin on it—an intellectually and spiritually invigorating community in which the law can be studied and lawyers and leaders of diverse backgrounds can be shaped in an atmosphere of faith.

Let me briefly tell you what I mean by this. I envision—and ask you to help create—a community that is both intellectually and spiritually invigorating. On the intellectual level, I envision—and ask you to contribute to—a place where the classrooms, carrels, and hallways are filled with lively discussion about important topics, involving a wide variety of informed viewpoints. That will require that you fully prepare for class everyday, a task that will become more difficult as the months and years roll on. It will require that you attend and participate in academic symposia that occur at the Law School. It will require that you seek out and respect the views of others who disagree with you. It will also require that you be willing to not assume that you already know everything. For some that may be a real challenge. However, experience has shown that you are more likely to advance in knowledge

if you approach topics with a good deal of humility. Justice Byron White, for whom I had the opportunity to clerk, noted on more than one occasion that the law clerks were "rarely in doubt and often in error," while the justices were "often in doubt and rarely in error." There is a great deal of wisdom in that observation, wisdom that can hold the key to a truly invigorating intellectual climate.

On the spiritual level, I envision—and invite each of you to contribute to—a community in which we can help one another work through and consider fully the very real spiritual challenges that the study and practice of law bring to the surface, a community in which we can help one another discover the soul-satisfying aspects of the study and practice of law, aspects whose absence in the modern bar causes so much disillusionment among lawyers today. More specifically, I invite you to take part in the professional seminar courses that are offered, the Spirit of the Law discussions that take place here, and the devotionals sponsored by the university. I also urge you to find ways to be of real service to others around you, both inside and outside the Law School and both inside and outside your faith. If you do that, not only will you improve spiritually, you will also help create a spiritually invigorating environment in which all can be edified.

Most of all, I envision—and ask you to contribute to—a community in which faith is an integral part of all we do. I have pondered much President Romney's charge that we create an environment in which the laws of man can be learned in light of the laws of God. Just how does the light of the laws of God help us as we study the laws of men? The full answer to that question will take years to discover, but I encourage you to begin that process now. Let me suggest two simple initial responses, by way of example of what President Romney may have had in mind.

First, the laws of God teach us that we are all children of heavenly parents and that each has divine potential within. That one truth ought to alter fundamentally the way in which you approach the study of law. It ought to provide more incentive to study earnestly so that you might be prepared to truly help those sons and daughters of God. It also ought to shape the way you interact with



## KEVIN J WORTHEN

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Kevin J. Worthen became dean of the J. Reuben Clark Law School on June 1, 2004, replacing H. Reese Hansen. Worthen joined the Law School faculty in 1987 and has served as associate dean for academic affairs since 1999.

The first JRCLS alum to serve as the school's dean, Worthen graduated first in his class (1982), *summa cum laude*, from the Law School, where he was a member of the Order of the Coif. Clerking for Judge Malcolm R. Wilkey of the U.S. Court of Appeals for the District of Columbia Circuit right out of law school, Worthen then accepted a two-year clerkship with Justice Byron R. White of the U.S. Supreme Court, developing a love for research and publishing that would later encourage him to become a professor. Before joining the faculty at the BYU Law School, he practiced law with Jennings, Strouss & Salmon in Phoenix, Arizona.

Worthen has an extensive background in American Indian law, something he began exploring while attending BYU as a student. "We had at the time a requirement to take 'Horizon' courses (courses designed to give different perspectives on the law) and Indian law was one of them," Worthen said. "I was just fascinated with the subject." His knowledge of American Indian law was helpful when dealing with clients who did business on the vast Navajo Indian reservation in Arizona.

A Fulbright scholar to the University of Chile Law School in the fall of 1994 and Spanish-speaking from a mission in Monterrey, Mexico, Worthen has authored articles about federal Indian law, local government law, and constitutional law.

"Kevin Worthen brings to his new assignment a remarkable combination of outstanding academic and professional accomplishments, proven administrative abilities, sound judgment and exceptional personal skills," H. Reese Hansen said. "He will provide the strong leadership required for the Law School to reach its full potential."

others both inside and outside the Law School as you engage in what is often a stressful process. As your patience wears thin at arguments that seem annoying or at actions that seem indifferent, the laws of God can remind us that, as C. S. Lewis has noted:

*It is a serious thing to live in a society of possible gods and goddesses, to remember that the dullest and most uninteresting person you can talk to may one day be a creature which, if you saw it now, you would be strongly tempted to worship. . . . There are no ordinary people. You have never talked to a mere mortal. . . . [I]t is immortals whom we joke with, work with . . . snub, and exploit.<sup>30</sup>*

While the traditional study of law emphasizes the utilitarian importance of tolerating the views and differences of others, the laws of God require it as a manifestation of our love for God and His children.

Second, understanding the laws of God can help us see that the study of law is even more intellectually engaging and profoundly important than we might have ever imagined. Consider, for example, this provocative statement in Doctrine and Covenants, section 88, verse 34: “That which is governed by law is also preserved by law and perfected and sanctified by the same.” I suggest that the unpacking of that statement could involve years of intellectual struggle and produce a plethora of soul-satisfying insights, a process, again, that I hope you begin at this school.

Operating in an atmosphere of faith also means that we create space to share spiritual feelings with one another from time to time. That will usually happen in private conversations. However, I want to follow the pattern set by Dean Hansen in his last public decanal pronouncement at graduation last spring and let you, my friends, know in my first public decanal pronouncement of my faith in our Heavenly Father. I believe with all my heart that He lives and loves each one of us with a love more profound than we can imagine. I believe with all my being that we are literally His sons and daughters, that he has placed us on earth to allow us to experience the things we need to experience in order to eventually enjoy the fullness of joy that He enjoys, and that because of the atoning sacrifice of His Son Jesus Christ, we can experience that joy despite our current imperfections. I also firmly believe that He



has had a hand in the establishment of this Law School and that He cares about what each one of us does with the opportunity we have to study here.

What you do here in the next three years matters a lot. It matters to me. It matters to you. It matters to your families. It matters to countless others. It matters to God.

May we all be blessed as we go forward in this important and wonderfully joyous endeavor is my prayer in the name of Jesus Christ, amen.

#### NOTES

- ① Thanks to Eldon Bott for relating this and numerous lawyer jokes to me.
- ② Mimi Wolverton, Walter H. Gmelch, Joni Montez, Charles T. Nies, *The Changing Nature of Academic Deanship* 5 (2001) (citing Earl J. McGrath, *The Dean*, 70 *J. of Higher Educ.* 599, 600 (1999)).
- ③ Wolverton, et al., *supra* note 1, at 5 (citing John S. Brubacher and Willis Rudy, *Higher Education in Transition* (1st ed. 1958)).
- ④ Jack Chorowsky, *Thinking Like a Lawyer*, 80 *U. Det. Mercy L. Rev.* 463–465 (2003).
- ⑤ *Id.*
- ⑥ David T. ButleRitchie, *Situating “Thinking Like a Lawyer” Within Legal Pedagogy*, 50 *Clev. St. L. Rev.* 29, 32 (2003).
- ⑦ Dallin H. Oaks, *Becoming J. Reuben Clark’s Law School*, Opening Remarks (August 27, 1973) (fd at 15).
- ⑧ ButleRitchie, *supra* note 6, at 33.
- ⑨ Karl N. Llewellyn, *The Bramble Bush* (1951).
- ⑩ Oaks, *supra* note 7.

⑪ Robert A. Ferguson, *Law and Letters in American Culture* 11 (1964).

⑫ Inter-American Development Bank, *Development Beyond Economics: Economic and Social Progress in Latin America*, at 26 (and Fig. 1.48).

⑬ See Kenneth H. (Buddy) MacKay, Jr., *Corruption, Transparency and Rule of Law*, 13 *Fla. J. Int’l L.* 10, 12 (2000) (noting that “\$6,000 a year is caused by the weakness in the rule of law and the prevalence of corruption”).

⑭ Carl S. Hawkins, *The Founding of the J. Reuben Clark Law School*, *BYU Studies* 1 (1999).

⑮ *Id.*

⑯ Gordon B. Hinckley, *James Henry Moyle: The Story of a Distinguished American and Honored Churchman* 128 (1961).

⑰ Hinckley, *supra* note 16, at 130.

⑱ Hinckley, *supra* note 16, at 132.

⑲ Marion G. Romney, *Why the J. Reuben Clark Law School?* Dedicatory Address and Prayer of the J. Reuben Clark Law Building (1975) (fd at 31).

⑳ Marion G. Romney, *Becoming J. Reuben Clark’s Law School*, August 27, 1973 (fd at 20).

㉑ David Yarn, *J. Reuben Clark, Jr.: A Role Model*, Address to Law School 3/28/85.

㉒ Frank W. Fox, *J. Reuben Clark: The Public Years* 35 (1980).

㉓ Fox, *supra* note 22, at 34.

㉔ D. Michael Quinn, *J. Reuben Clark: The Church Years* 122 (1983).

㉕ Quinn, *supra* note 24, at 122–23.

㉖ Quinn, *supra* note 24, at 124.

㉗ Quinn, *supra* note 24, at 124.

㉘ Romney, 1975, fd at 31.

㉙ Romney *supra* 1973 address (fd 18).

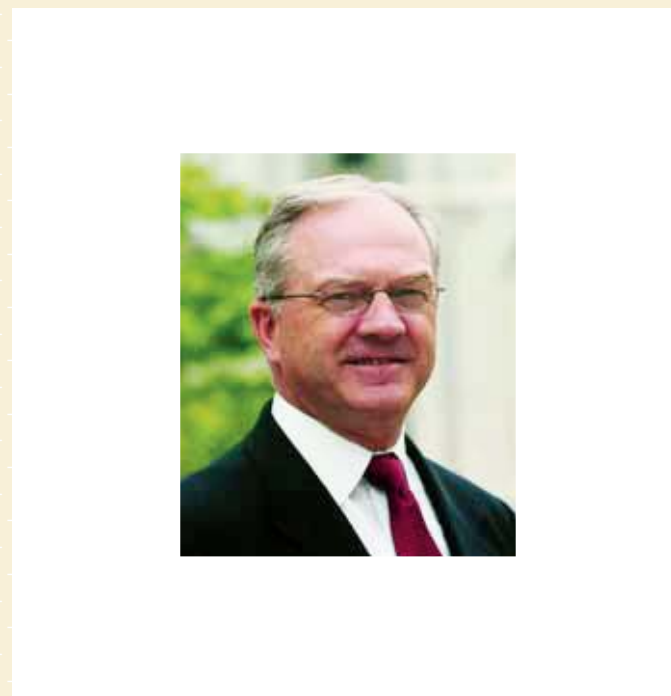
㉚ C. S. Lewis, *The Weight of Glory* 39–40, quoted in C. S. Lewis: *The Man and His Message* 150–51.

Michael A. Neider, '76, left Tyhee, Idaho, to attend Brigham Young University as an undergraduate and then continued on at the new J. Reuben Clark Law School, one of the members of the first graduating class. These experiences would shape the rest of his life, and law school graduation was one of the highlights. He relates:

*The capstone of my experience occurred at our baccalaureate graduation exercises when Dean Rex E. Lee told us we had been taught in law school to know there are many answers to any one question. Then in a way that has been a solace to me over the years, he assured us that there were verities upon which we could rely. He proceeded to share his witness of the truth he knew, including his testimony of the Savior and the latter-day restoration. We could not have had a greater mentor in law school than Dean Rex Lee.*

The young attorney began a litigation practice in Salt Lake City and was further taught by clients and judges, as related by his following account.

*Early on I was retained after his trial by an honorable man from Idaho who was a sheep rancher. He had helped organize an SBA company, and when several of the borrowers promptly returned matching funds to private lenders, he was indicted and found guilty with three others for filing false claims under federal law based on his signing the federal application. I took the appeal and made the argument to the 10th Circuit Court of Appeals in Denver that the verdict could not be supported by the evidence. It was a long shot. I reasoned with the three-judge panel that the only evidence against my client was the application, the deposit of money he made into the company bank account, and the checks he signed to the borrowers. There was no evidence that he was knowingly a part of a conspiracy. When one of the members of the court asked if I was serious in asking it to overturn the conviction*



*based on lack of supporting evidence, he laughed and said before all those present, 'You are a dreamer, Mr. Neider!' After the conviction was upheld, I continued my enthusiasm for the case with a petition for a rehearing en banc. While I was worrying about the possible future hearing and the reassertion of the 'dreamer' charge, we received in the mail not a denial or grant of the petition for rehearing but a reversal of the conviction on a previously unnoticed but more compelling ground. My client was free and exonerated. The decision was signed by none other than the Honorable Justice Monroe McKay. He had taken the time to thoroughly review the case, see other grounds for the defective decision, and then make the right decision. Of course, he is another great mentor from the Law School.*

Michael Neider and his wife, Rosemary (Curtis), are the parents of eight children and grandparents of six. Michael testifies:

*My experiences in law school, practicing law, and in life have con-*

*firmed my belief in God and that the Spirit is an important guide to what we do each day. These experiences have reaffirmed my belief in the relative goodness of humankind, that we have many good laws that protect us, and that there are multitudes of honorable men and women who work hard to promote justice and limit evil. I have come to be more aware of God's influence in our lives as He protects his children through the ideals, values, talent, and efforts of everyday, common individuals with uncommon virtue.*

Sustained this year as the second counselor in the Young Men general presidency, Neider brings his enthusiasm for the youth to this calling and a belief in their special potential. Like the experiences that shaped his path, he believes young men will develop in the same ways. "They need to have activities and opportunities to experience values and make correct decisions that help bring happiness and security to themselves, so they can bring those blessings to their future families."

## Michael Neider Called to Young Men General Presidency



# Community Mediation Center Flourishes in Provo

BY ARWEN TAYLOR

For the last four years, low-income and marginalized populations of Utah Valley have found a viable alternative to taking disputes to court. This alternative lies in the Community Mediation Center, a flowering of collaborative efforts within the Utah Valley community. Staffed mostly by volunteers and students, the Mediation Center keeps its fees low and focuses its efforts on low-income and underprivileged fractions of the community.

The center opened its first office in 2000, with a second opening in south Provo in May of 2004 through the generous help of the United Way. Tamara Fackrell, '98, is the executive director and a founder of the Community Mediation Center and works with the BYU Law School's Susan Bradshaw, '97, director of the Schooley

Mediation Program; Associate Dean Katherine Pullins, '88; and Professor Jim Backman. She is also assisted by Ryan Thomas, '79; Hugh Rode, '01; Brent Bullock, '87; and Ellen Hall Loveland, '01, at UVSC. Fackrell wanted to give the community a more effective—and more peaceful—venue for solving disputes. The Schooley Mediation Program, which teaches mediation to BYU law students, runs small-claims court mediations in Provo, Orem, American Fork, and Spanish Fork, but Fackrell and others wanted a venue geared to more general disputes in the community. In the fall of 2000, 10 students were trained to become the Mediation Center's first generation of trained volunteer mediators at the Law School.

The Community Mediation Center is largely focused on the lower-income population, emphasizing in its mission statement that it strives to “educate members of the community, especially those with limited

resources, about available services to assist with family housing and employment issues,” and to “communicate with populations frequently overlooked, such as Spanish-speaking members of the community, about resources and services.” The Community Mediation Center works closely with the Centro Hispano to help the Spanish-speaking community with dispute resolution.

Mediation is a process especially valuable to families and individuals with few resources because conflicts can be settled without the time and financial investment demanded by the courts. Trained mediator volunteers from the center meet with the parties in conflict, talk through the problems, and put agreements into writing. These written agreements, authorized by certified mediators, are legally

binding. Mediation has all of the useful outcomes of going to court without the outlays of time and money. “Court isn't always the best answer for relationship issues,” Fackrell explains. The big reason mediation works, she says, is that it allows people to solve their own problems. “It seems like the problem-makers should be the problem-solvers. Mediation helps people who have a problem to solve it without having to go to someone outside. We facilitate people talking to one another, and the participants come to their own decisions, which is very empowering for them.”

The Mediation Center deals with all kinds of cases, from domestic disputes such as divorce and parent-child issues to employment disputes and restorative justice issues like misdemeanor restitution.

Cases come from people in the community, referrals from attorneys, or the Juvenile Court system, and the center sets up a mediator to work with the parties involved. Because the center utilizes volunteers and staff mediators, the fees for the parties can be kept very low.

In addition to coordinating mediation and training volunteers, the Mediation Center serves the community with a program run on a grant from the Commission on Criminal and Juvenile Justice. During fall and winter semesters, Fackrell supervises four undergraduate mediation classes in the School of Social Work; the Department of Marriage, Family, and Human Development; the Department of Psychology; and prelaw at BYU. These students, along with UVSC mediation students, go to at-risk sites such as Slate Canyon Youth Lock-Up and teach children conflict resolution skills like communicating, negotiating, and anger management. In the 2002–2003 school year, 54 BYU students donated nearly 1,400 hours to teaching these classes in the Provo School District.

The Mediation Center is located at 817 S. Freedom Boulevard, Provo, Utah, and may be reached by phone at (801) 371-6790. The Mediation Center Web site is located at [www.communitymediationcenter.org](http://www.communitymediationcenter.org)



Tamara Fackrell,  
executive director  
of the center.

It's a long way from Tel-Aviv, Israel, to Provo, Utah. It's even a bigger jump imagining a private practice Israeli attorney connecting with the J. Reuben Clark Law School as an LLM student. But that's exactly what happened when Yoram Chady entered the Law School in the fall of 2003.

First of all, it's not easy to get into Tel-Aviv University's Law School in Israel: typically only the top 2–3 percent of all applicants are admitted, based on grades and placement scores. For Chady, born in the small town of Petch Tikva in Israel, one of seven brothers and one sister, the dream of being a lawyer began at age 15 when he realized how fascinated he was with legal ideas. He began then to plan and prepare for law school in Tel-Aviv. Several years later he was admitted, graduating in 1990 in the top 5 percent of his class.

In 1992 he founded his own law firm, Yoram Chady Law Offices, in Tel-Aviv, specializing in property, business, and Internet law. He counseled clients, drafted local and international contracts, wrote legal opinions, and litigated cases in every court in Israel, including the supreme court. These experiences followed a stint of working in the United States in Dallas, Texas, right after graduation.



## From Tel-Aviv to Provo: Yoram Chady, Attorney and BYU Student

The key factor in coming to Utah was marrying Tonia Lambert, a U.S. citizen from Park City who was working in Israel, in 1990. From the time of their marriage, the Chadys made their home in Israel with children Sean (age 11), Shenan (age 8), and Jason (age 3), until Tonia convinced Yoram to return to the United States because of the ever-present threat of suicide bombers near their home.

Yoram and Tonia moved their family to Park City, with Yoram maintaining his law firm in Israel. But he wanted to take the Utah bar exam, and there is a mandatory requirement to take at least five courses at an accredited law school before a foreign attorney can sit for it. Then he met Michael Goldsmith, faculty member at the J. Reuben Clark Law School and a resident of Park City, who recommended BYU's Law School, because "it combined excellent academics with a unique atmosphere."

Yoram came to Provo and met with Professor David Thomas, who talked about the predominantly LDS population of students and the "unique" atmosphere of the school.

Yoram attributes those two conversations to his growing desire to attend BYU's Law School. The other options now seemed unattractive in comparison. He met with assis-

tant dean Carl Hernandez, who smoothed the way for Yoram to join the fall LLM class of 2003, even though the class was already two weeks into the semester. "I could tell Yoram was going to add a valuable viewpoint to the school," said Dean Hernandez. "He had a desire to be here, and I knew right then that he would make a positive impact."

Lovisa Lyman, who runs the legal-writing class for LLM students, was somewhat skeptical that Yoram could successfully make up the work that the students had already completed. "But he caught up and did every assignment in a short amount of time. He worked hard and did very, very well in the class."

For his part, Chady was overwhelmed with what he experienced in the Law School.

*The students and faculty that I met seemed to have a kind of mission in their hearts different from other students and professors I had known. There was a passion for the law as well as no division between that and their values. The students were so good—what a willingness to help me. I have talked frankly with others about the wonder of this experience. I think it has to do with religion and the moral values of the people here. It was thrilling to be part of this school, where on one hand you have professors who teach from their hearts and passionately profess the value of the law as a tool for the people it aims to serve and protect. On the other hand, there are the students who wish to serve the law with faith, high values, and compassion.*

Yoram Chady took the Utah bar in July 2004 and will practice in Park City as well as Israel. He is the first Israeli student to attend the J. Reuben Clark Law School.



### **Bruce T. Reese Named Chair of National Association of Broadcasters Radio Board**

Bruce T. Reese, '76, has recently been elected chair of the National Association of Broadcasters Radio Board for 2004-2005.

As president and chief executive officer of Bonneville International Corporation, headquartered in Salt Lake City, Reese oversees 35 radio stations, an NBC-affiliated television station, and related operating divisions. Vice chair of the NAB Radio Board in 2003-2004, Reese now heads a 35-person board representing owners and operations of radio stations in addressing policy planning and needs. He will spend time in Washington, D.C., formulating policies concerning issues from both regulatory and legislative standpoints in areas such as public-service obligations, content issues, and changing from analog to digital.

The National Association of Broadcasters is a trade association that promotes and protects the interests of radio and television broadcasters nationally and internationally. The organization is the broadcaster's voice before Congress, federal agencies, and the courts. Reese also sits on the NAB executive committee and will likely succeed to the chairmanship of the NAB Board for 2005-2006.

## Professor Takes Department of Justice Post



"We certainly have had some similar interests," says Thomas Lee of his father, the late Rex E. Lee, assistant attorney general for the civil division in the U.S. Department of Justice during the 1970s. In April 2004 President George W. Bush appointed Thomas Lee a deputy assistant attorney general. "I share my father's enthusiasm for public service. It's a dream come true. If I could create my own dream job, this would be it."

Thomas Lee will lead more than 100 attorneys of the Federal Programs Branch representing the U.S. president, cabinet officers, and federal agencies. The branch defends the constitutionality of federal statutes and the legality of government decisions. It also opposes suits seeking to overturn government policies and programs, and initiates litigation on behalf of the federal government.

"I'm looking forward to being involved in a broad range of exciting cases," says Lee. "I feel honored to have the opportunity to represent the country, the president, and other federal officers in that capacity."

Cases overseen by Lee's branch include partial-birth abortion, counterterrorism, and recent laws restricting children's access to pornography. "It's a fascinating area that will have a significant impact on many

cutting-edge questions of constitutional law."

Like his father, Thomas Lee has been a professor at the J. Reuben Clark Law School. His father was the founding dean of the Law School, taking a leave of absence for government service. Rex Lee later served as the U.S. solicitor general. Thomas Lee is also taking a leave of absence from the Law School and will return after his government service is complete.

Thomas Lee joined the Law School faculty in 1997, teaching courses on constitutional, procedural, and public law. He has published more than two dozen articles in national law journals. Two years ago Lee represented Utah before the U.S. Supreme Court, arguing that unlawful census methods had cost Utah an additional seat in the U.S. House of Representatives.

After graduating from BYU and with high honors from the University of Chicago Law School, Lee clerked for Supreme Court Justice Clarence Thomas. He then practiced with the law firm of Parr, Waddoups, Brown, Gee and Loveless in Salt Lake City.

"This is a wonderful recognition of Tom's professional stature and ability," said H. Reese Hansen, outgoing dean of the Law School. "This opportunity will be a strength in Tom's career and for his future students."





**Christopher Newton, '89**, won the primary election for Vigo County Division 4 Superior Court judge in Indiana. He will begin serving on January 1, 2005. Newton's extensive trial experience stems from a 15-year legal practice focusing on family law and the protection of children and parents.



**Jeff S. Penney, '89**, was appointed Superior Court judge for Placer County, California, after winning the March 2004 election by a 75/25 percent margin, the largest victory in county history for an open-seat office.



**Samuel McVey, '83**, was appointed a judge to the Fourth District Court for the State of Utah in April 2004, after returning from active duty in Virginia to help with the Marine Corps' effort to establish a new court system in Iraq. He was a partner in the law firm of Kirton & McConkie from 1989 to 2003.



**Derek P. Pullan, '93**, was appointed a judge to the Fourth District Court for the State of Utah in September 2003. He previously served as Wasatch County attorney.

## In Memoriam

**Gary L. Barnett, '76**, passed away at his home on April 16, 2004. He practiced law in his own law firm for 28 years. Prior to becoming an attorney, he earned a doctoral degree in languages and taught for several years. Barnett is survived by his wife, Ana Maria, and their four children: Daniel (Aubrey), David, Rachel, and Jared; and his three children by his late wife, Mirtala: Rebecca, Gary, and Michelle.

**Henry Keonaona Chai II, '79**, battled cancer for 10 months before dying on August 1, 2004, in his home in South Jordan, Utah. He was a founding partner in the Salt Lake City law firm of Blackburn and Stoll, where he practiced law until the time of his death. A stake president for nine years, he completed service as a mission president in 1998. Chai is survived by his wife of 28 years, Judith Ann Christensen; their six children: Nathan, 27 (Mary); Kristin, 25 (Jeff); Erin, 22; Stephen, 21; Ryan, 15;

and Jordan, 12); and two grandchildren, Isaac and Melea'ana.

**Melissa Hawkey Davis, '93**, died March 12, 2004, after battling a brain tumor for two years. She leaves her husband, Phil Davis, and two children: Hawkey, 5; and London, 3. A fund has been set up at the Bank of American Fork to help with medical costs. Donations can be made to the Melissa Davis Medical Fund, 712 East Main Street, American Fork, Utah 84043.

Attorney, civic leader, and Law School donor **Rulon Earl** passed away on June 29, 2004, in Las Vegas, Nevada, at age 94. Born in the Mormon settlement of Bunkerville, Nevada, the 18th of 19 children in his family, Earl worked his way through George Washington University during the Great Depression, then moved back West, where he guided the Las Vegas Housing Authority and the Church through some of its most dynamic growth in the valley. He was

the "last of the old-time lawyers," says son District Judge Allan R. Earl—a quiet, kind visionary, whose word was his bond.

**Emma Rebecca Thomas, '77**, passed away unexpectedly in Provo, Utah, on March 4, 2004. She was appointed as chair of the Utah Workforce Appeals Board by Governor Michael O. Leavitt in 1997. Becky is survived by her husband, David B. Thomas, '79, assistant general counsel at BYU, and their three daughters, Emma, Alexandra, and Hannah.

**Mary Alice Woolley**, lifetime friend of the J. Reuben Clark Law School, died August 10, 2003. She was born January 6, 1919, to Roland and Mary Alice Spry Woolley in Salt Lake City. Woolley lived most of her life in North Hollywood, California, and visited the Law School just six weeks before her death. Thousands of law students benefited from the funds her family left in trust in the Woolley Law School Loan Fund.



# Alumni Weekend 2004



## Friday, October 15, 2004

- ☐ 18-Hole Golf Scramble Tournament at South Mountain Golf Course
- ☐ Brunch and Alumni Women Law Forum Panel: "Lds Women Law Clerks: Life After the Supreme Court"
- ☐ Continuing Legal Education (CLE) Ethics Seminar
- ☐ Alumni Reception
- ☐ Alumni Weekend Western BBQ Dinner
- ☐ Reunions: Classes of 1979, 1984, 1989, 1994, and 1999



## Saturday, October 15, 2004

- ☐ Homecoming Parade
- ☐ Tailgate Party for Family and Friends
- ☐ Football Game: BYU v. Wyoming



FOR MORE INFORMATION SEE

[http://www.law2.byu.edu/Law\\_School/alumni/alumni\\_weekend\\_activities.htm](http://www.law2.byu.edu/Law_School/alumni/alumni_weekend_activities.htm)



## New Mission President

Lon D. Packard, '77, and his wife, Debra, have been called to lead the Chile Santiago West Mission from July 1, 2004, until June 30, 2007. President and Sister Packard will be accompanied by their daughter Laura Anne and son Brett, who will both attend school in Chile. Daughter Kristen will visit with her parents this summer and return to college in the fall, while Becky, who recently completed her bachelor's degree, will be performing humanitarian service in Africa until she returns to graduate school. Married daughters, Melanie Squire (and husband, Jim) and Melissa Sanchez (and husband, Mark) will be taking good care of the Packard's four grandchildren in California.

Family solidarity runs deep with the Packards. Lon and his twin brother, Von, entered the

J. Reuben Clark Law School together and graduated together in December 1976. Previously, they both served missions in South America at the same time and graduated simultaneously from Stanford University in three years. After two years with two different firms in Southern and Northern California, respectively, they joined their brother Ron in Palo Alto in 1979. For the past 25 years they have been specializing in complex business litigations under the family firm name of Packard, Packard & Johnson, with offices in Palo Alto, California, and Salt Lake City, Utah. From 1993 to 1996 the firm supported Von, who had been called to serve as mission president in the Chile Santiago North Mission. Now Lon has an opportunity to serve.



+ + + + +  
+ Elder Dallin H. Oaks +  
+ will speak at the +  
+ Annual J. Reuben Clark +  
+ Devotional via Church +  
+ satellite network +  
+ on February 11, 2005. +  
+ The broadcast will +  
+ originate from the +  
+ Conference Center in +  
+ Salt Lake City, Utah. +  
+ + + + +



# Intersections of Law and Faith

BY CLAY M. SMITH

THERE ARE INTERSECTIONS BETWEEN OUR LIFE'S WORK, THE LAW, AND OUR LIFE'S PURPOSES. By referring to these points of contact as intersections, I do not mean to infer that they are clashes. Sometimes these intersections fit together like the pieces of a jigsaw puzzle, and sometimes they result in friction and sparks.

I want to look at some examples of these intersections to increase our awareness of them and perhaps prompt us to think about how best to deal with them.

Recently a lawyer came into court seeking an order of contempt for two witnesses' failure to appear at their deposition. His application was based upon his declaration that the witnesses had been served with subpoenas and then failed to appear—nothing more was stated. At the hearing, the witnesses and their attorney appeared and presented a much different picture. They explained that after having been served, they had obtained counsel, attempted to resolve the need for their deposition, and failing that, sent an objection to the lawyer. I felt completely misled by the first attorney and denied the relief he was requesting. Even in light of the Rules of Professional Conduct 5-200: "In presenting a matter to a tribunal a member . . . shall not seek to mislead the judge", the first lawyer left the hearing absolutely unable to appreciate my concerns about his actions. My belief in honesty in word and deed intersected with the law on professional conduct, and I ruled accordingly.

However, in a death penalty case in Logan, Utah, a jury prayed together and a group of the jurors gave a hands-on blessing to the sole holdout juror during the penalty phase. The jury then recommended a life sentence without parole. Under the law the jury takes an oath to decide issues based on evidence and the law; they set aside their personal philosophy and religious beliefs. Individual members of that Logan jury believed that it was essential to seek guidance and inspiration for their decisions, having faith that God could and would enlighten their minds to know what they should do in a difficult situation. Do you see an intersection here between law and faith? In this case, the law must control. There is a very real danger of conflict between the juror's conduct and their oath. Additionally, actual and apparent fairness to the defendant is paramount. There must be an allegiance to a system that mandates a decision based on the law and evidence.

The resolution is embedded in the 12th Article of Faith: "We believe in being subject to . . . magistrates, in obeying, honoring, and sustaining the law." This is a remarkable prophetic endorsement of the rule of law—remarkable because it was given at a time when our people were so deeply in need of the protective mantle of the law, and it was so often denied them.

So, Alabama Supreme Court Justice Roy Moore's refusal to obey a federal court order to remove the Ten Commandments monument from the supreme court building was incorrect, because it was not based on the lawful order of a higher court, agree with it or not. Compare the conduct of Justice Moore with these words from President Wilford Woodruff in Official Declaration 1: "Inasmuch as laws have been enacted by Congress . . . which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws, and use my influence with the members of the Church over which I preside to have them do likewise."

*Clay M. Smith, '77, is the judge of the Orange County Superior Court. This talk was given to the Orange County J. Reuben Clark Law Society on May 19, 2004.*

The Clark Memorandum welcomes the submission of short essays and anecdotes from its readers. Send your short article (750 words or less) for "Life in the Law" to [wiselj@lawgate.byu.edu](mailto:wiselj@lawgate.byu.edu).

**Clark Memorandum**

J. Reuben Clark Law Society

J. Reuben Clark Law School

Brigham Young University

