

Spring 1987

Clark Memorandum: Spring/Summer 1987

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J. Reuben Clark Law School and J. Reuben Clark Law Society, "Clark Memorandum: Spring/Summer 1987" (1987). *The Clark Memorandum*. 5.

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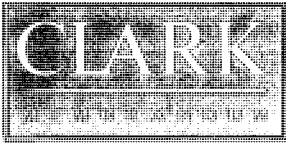
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CLARK

MEMORANDUM

SPRING
SUMMER
1987



C O N T E N T S

Bruce C. Hafen
Dean

Claude E. Zobell
Editor

Charles D. Cranney
Production/Copy Editor

Linda A. Sullivan
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John Snyder
Photographer

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Associate Editor

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Associate Editor

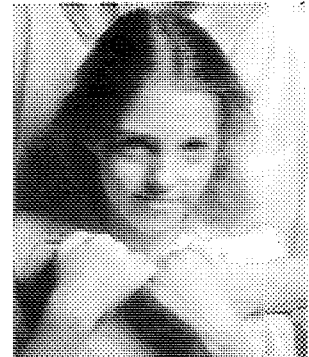
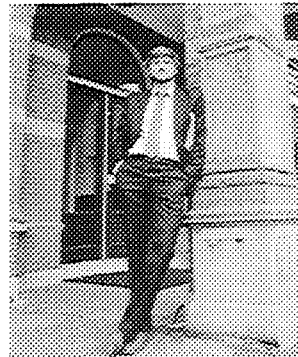
Rick Bickmore
Assistant Copy Editor

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Spring/Summer 1987

The *Clark Memorandum* is published by the J. Reuben Clark Law School of Brigham Young University and the J. Reuben Clark Law Society. The articles do not necessarily reflect the opinions of these organizations.

GOING DUTCH

BY KIRA P. DAVIS

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TWO JRCCLS ALUMNI

WORKING AT THE IRAN-U.S. TRIBUNAL
IN THE HAGUE

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THE IRAN--UNITED STATES
Claims Tribunal was set up in the
Netherlands in 1982 by the agreement
between Iran and the US as part of the
bargain for the release of the American
hostages from Iran. Jeff Robinson and
Mark Davis are two J Reuben Clark Law
School graduates (both from the class

of '83) working in The Hague as legal assistants to Judge
Charles N. Brower, an American arbitrator on this tribunal

Though I am married to Mark Davis, my view of Mark's and
Jeff's work has been from the outside looking in, seeing things
but not really comprehending them completely, like someone
on the street watching people in a lighted room—I see the
action but don't hear any sound. Cases come, big cases that go

Mark Davis





.....

CASES COME,

BIG CASES

THAT GO DOWN

LIKE RABBITS

IN A SNAKE'S

THROAT

down like rabbits in a snake's throat, keeping Mark up in his office until nine, pulling his beard and scowling into books. I hear bits of it from him at home—sometimes he summarizes cases for me, he has even come up with ideas that way, telling it to me. And sometimes details about his separate life from me over there leak out at parties. Mark and Jeff look at each other knowingly and groan about Judge Whatshisname, or they compare vacation or career plans. I stand and smile politely most of the time, holding my orange juice. But in large part it remains a mystery to me.

So one day in late December I decided to try to get an insider's view and write this article. I scheduled an interview with Mark and Jeff, and they treated me very nearly like a real reporter.

It was coincidentally an exciting time to be doing an interview at the Tribunal, newspapers and television networks in the States and in Europe were carrying the story that the Tribunal had been playing a major role in secret negotiations for the release of American hostages in Lebanon. There were reporters in raincoats huddled under the eaves as we drove up in our station wagon. They looked searchingly at us a few seconds but then decided we were nobody as we drove on through the electronically opened gate and into the parking lot. A big blue bus with "CD" license plates drove in just behind us and the reporters

jumped down off the porch and crowded around. "*Corps Diplomatique*—those are the guys from the embassy," Mark explained to me. "They're here for negotiations right now." He laughed. "But what they just won't believe," and here he pointed to the press, "is that the negotiations have got nothing to do with hostages."

The Tribunal is as important looking as its neighbors—all embassies and schools and mansions—each with its spread of grass and a front gate, but it has no sign, no title posted anywhere, only a flagpole in the front yard behind the fence—as if the building knew very well how important it was, but wasn't saying. There is a circular drive, curving up to the front portico, and a fenced-off entrance to a parking lot on the right side as you approach. There is a little red

speaker box for drivers to shout into and explain their business as they wait for the guard inside to open the gate and let them in. There are still a few brave geraniums left in flower boxes under windows on the ground and first floors.

We parked in the back and came in through a back door. The *New York Times* had described the Tribunal as "heavily guarded" the day before, and Mark joked with the very unintimidating guard in the front hallway as we went in to get his electronic badge needed to open certain doors in "secured areas" of the

building. There was a cartoon of a tank with "taxi" written on it tacked up on the wall of the guard's room, and he teased about hiring out his services as a "heavy guard."

We met John Crook, American Embassy representative at the Tribunal, in the hall. He congratulated us on the birth of our baby a month ago and asked how Christmas had been, and then we asked what he thought of the recent press uproar. He gave a tired sort of chuckle and shook his head. "This really is a nonstory. They're sure we're trading money for bodies." He mentioned that two major American networks had carried the story last night. "We just have to cool things down—the more we deny, the more they're sure."

We walked on again down the hall. This building was once a hotel, but now the front foyer is redivided into boxy little guards' rooms and an air-lockish front hall, with a metal detector and electronically locking doors at both ends and a receptionists' cubicle, and up the broad stairs are copy centers and hearing rooms and offices, and even a prayer room for the devotions of the Iranian contingent. It is clean and quiet—unassuming prints and photographs of ornate mosques wait on the walls. There are no surprises in the architecture, no miniblinds, no dramatic lighting, it's as if everything were waiting respectfully on the decision of the Tribunal, orderly and portioned out between English and Farsi, between God and Allah. There is nothing odd or unseemly or indecorous in the building—except perhaps the owl, who turns his head impossibly all the way around and winks at our girls when Mark brings them, or at anyone else gawking at him through the window on the second floor, there in his place next to the chimney outside, a few feet away.

Jeff and Mark share an office on the third floor overlooking a small yard filled with large trees. Mark's half of the office is not homey—his offices never are. He has an Iranian calendar, a cutaway diagram of an oil rig, and a crayon drawing of a mouse on the wall. He never brings things from home to hang up, it seems. He only puts there what Becky, our six-year-old, insists he tape up immediately after she's drawn it on nights when he has to work after dinner again and she goes with him for the hot chocolate from the machine in the hall and the sticky yellow memo pages peeled delightfully from a thick pad in his drawer. When he's in the middle of a case, he leaves books and files sprawled spine-up across his desk, keeping the places he'll want to read from as he composes his report into the dictaphone.

Jeff's portion of the office seems somewhat more orderly. His wall has a postcard of the Matterhorn (which he recently climbed) as well as a Sierra Club calendar, a couple of weathered Xeroxed cartoons, and a quote from Imam Khomeini: "Aim all your weapons at the U.S. for our enemy is the U.S." He also displays the art work of his four- and two-year-olds.





On the morning of my appointment, I got out my memo pad and my pen and set up Mark's dictaphone to record the interview, feeling very reporterish—the only reporter who could get in past the guards. After a few minutes Jeff came in, his raincoat glistening and his hair wet. He shook out his umbrella and asked if we had seen all the hubbub downstairs and

commented that his mother-in-law had called from the States the night before. "She wanted to know if the Tribunal would be closing up soon and if we would be coming home next month."

Mark laughed. "Oh, brother." He shuffled through the papers on his desk and showed me copies of recent articles from the *New York Times* and the *Washington Post* as well as releases from UPI and Reuters news agencies. There it was, bold and certain: "United States and Iranian officials are to meet Monday to resume negotiations on returning \$500 million in frozen assets. The issue figures in an Iranian offer to intercede for American hostages in Lebanon."

I asked them, first clearing my throat, "So tell me the truth about this: Is the Tribunal involved in hostage negotiations?" They both laughed as if it were hardly worth denying. So I asked them why there was this mix-up.

Mark said, "Well, Judge Brower's theory is that it's

the after-Christmas news vacuum." He and Jeff exchanged glances and chuckled. Jeff explained, "There really are negotiations going on here this week between Iran and the U.S. about a payment of about \$500 million to Iran, and there are in general some superficial similarities of the work at the Tribunal with the recent arms deals and hostage negotiations. Current circumstances made it look like they might be related. And that, coupled with some indecipherable statements recently made by the Speaker of the Iranian Parliament, Mr. Rafsanjani, fueled speculation that there might be some sort of relationship." Jeff looked solemnly down at his hands and then up at the ceiling, seeming to peer down inside his internal file and order the thing for me. He spoke as if into a dictaphone, putting in topic statements and even numbering his supporting points. I was flattered he treated me so much like an official Somebody—me, his neighbor and sometimes babysitter.

"What are the potential similarities here? One, Iran has sued the United States here in several cases for the return of military equipment that Iran bought and paid for when the Shah was in power but was never delivered and is being held now in various warehouses in the U.S. Two, there are substantial monetary assets of the Iranian government left over from the time of the hostage settlement that the U.S. government has so far refused to return to Iran. Iran sued here for the return of the money, and the U.S. argued that it was legally entitled to keep the money, at least until the Tribunal had finished its work. The Tribunal last August decided that the U.S. was not

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JEFF'S WALL
HAS A POST-
CARD OF THE
MATTERHORN
AS WELL AS A
SIERRA CLUB
CALENDAR,
AND A QUOTE
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KHOMEINI:
"AIM ALL YOUR
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 THE NINE
 ARBITRATORS
 APPOINTED TO
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 ARE ORGANIZED
 IN THREE
 "CHAMBERS,"
 EACH CHAMBER
 WITH AN
 AMERICAN,
 AN IRANIAN,
 AND A THIRD-
 COUNTRY JUDGE.

entitled to keep the money, however, and it ordered the U.S. to turn the money over as soon as the parties could reach agreement on certain technicalities. The U.S. and Iran are now in the process of determining just exactly how much of those assets are in the category that are supposed to go back. That's what the negotiations downstairs are about." He looked up to make sure I was following

I said, "You mean that the meetings going on downstairs right now are just coincidentally coming now when there is all this uproar in the States?"

Mark said it was even more coincidental than that. "The Tribunal's order for the U.S. to release the \$500 million came in August, around the time when a couple of hostages held by pro-Iranian groups in Lebanon were freed. A few weeks ago a professor in the States wrote a rather creative work of fiction in the *New York Times* where he said people shouldn't be looking at the \$50 million in arms that Reagan sneaked over for hostages but they should look at the \$500 million that the U.S. is giving Iran in The Hague. And he calls that the real 'wild card.' And then the UPI correspondent in Amsterdam—I don't know if he had seen the *Times* article or got the same idea on his own, but last week he sent off the wire story that negotiations were going on about \$500 million to be paid for hostages, and for a week now the lead sentences in all the papers have said 'negotiations over hostages.' And that's not what it's over. It's over whether it's \$500 million minus \$60 million or minus \$30 million or some other relatively insignificant number that's going to go back to Iran. The negotiations are over minor and nonpolitical points." Well, so much for believing everything you read in the papers.

Mark was casual, telling me about it. He leaned back with his hands together behind his head and smiled through his beard, occasionally gesturing, flipping a hand through the air. And we all pitied the poor reporters out there, huddled in the rain over their nonstory.

So if it's not arranging deals for the release of hostages, just what does it mean to be a legal assistant to a judge here? Well, that requires a little background. When the U.S. Embassy in Iran was attacked and the embassy personnel taken hostage in 1979, President Carter froze more than \$8 billion in Iranian money held in American banks—and a lot of that money was subject to judicial attachment by American plaintiffs who had sued Iran in U.S. courts for financial losses during the Iranian Revolution. The Algiers Accords, the agreements signed 444 days later in January 1981, required

Iran to release the hostages if the U.S. would unfreeze Iran's money and dissolve the judicial attachments. But to protect the rights of the Americans who had claims against Iran, \$1 billion of the money was diverted to a special "security account" in Holland, and the Tribunal was established to decide those claims, with all amounts found owing to be paid out of the security account. Nearly 3,000 such claims were brought, and Mark's and Jeff's work is to help the Tribunal, and particularly their judge, to decide these cases.

As cases come up for hearing, they read all the materials submitted by the American claimant and the Iranian respondent, examine the evidence, and do research on the major legal issues or problems. As a guide for their judge, they then generally prepare a draft award or decision describing the case and giving their view of the right outcome. Then they attend the hearings held—simultaneously in English and Farsi—in one of two hearing rooms at the Tribunal. These tend to be rather similar to appellate hearings, where the parties highlight the main points in the evidence and legal arguments already submitted and answer the arbitrators' questions. Following the hearings, Jeff and Mark attend the deliberations—the aspect of the work they both agree is the most interesting—where the three arbitrators decide how the case should be awarded. After a case is decided, Mark and Jeff help write the final award—sometimes based on their own preliminary draft—or if the decision didn't go the way Judge Brower thought it should, they may draft a dissenting opinion. In addition, they work with the other arbitrators and their legal assistants to keep the cases proceeding toward resolution, trying to moderate the number and length of extension requests and generally making sure that the work advances with as few surprises as possible. Jeff also mentioned the two or three papers on legal topics he's written for Judge Brower to deliver at different conferences. Mark says his duties have included keeping the boss's Mercedes driven and his house checked on while he was away on vacation.

The nine arbitrators appointed to the Tribunal are organized in three "chambers," each chamber with an American, an Iranian, and a third-country judge. Each chamber has its own schedule of cases to work through. Once in a while a big case, or a particularly sensitive legal issue, comes along, and then there may be a full Tribunal hearing. In such a case the Tribunal meets at the Peace Palace, an ornate castle-like building just down the street, built during the idealism of the turn of the century by Andrew Carnegie with contributions from countries throughout the world as a center for—and a symbol of—solving international conflict through discussion and the application of law. The International Court of Justice also meets there. The Peace Palace also contains a very complete law library that Jeff and Mark often use in their research.



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ANOTHER

UNSUCCESSFUL

ATTEMPT TO

DISQUALIFY A

THIRD-WORLD

JUDGE LED TO

THE INFAMOUS

INCIDENT BACK

IN SEPTEMBER

1984, WHEN

TWO OF THE

IRANIAN JUDGES

ATTACKED THE

SWEDISH JUDGE

IN THE STAIR

WAY AT THE

TRIBUNAL AND

ATTEMPTED TO

STRANGLE HIM

WITH HIS OWN

NECKTIE

And how did a couple of BYU alumni end up here in The Hague? Jeff, who is a believer in the fruits of hard work, feels that this job “is a clerkship just like any other clerkship. Professors know about these things and recommend their best students. High academic credentials and a good school stand you in good stead.” Jeff was recommended for the job by Judge Wilkey, for whom he was working on the D C Circuit. “Judge Wilkey got a call from one arbitrator who said, ‘I’m looking for a legal assistant, do you know someone?’ and he said, ‘Yes,’ and recommended me.”

According to Mark, who is more a believer in serendipitous quirks of fate, it’s all a matter of being lucky, of being in the right place at the right time, and it’s not something you could plan on. And indeed, as it happened, Mark’s appointment was more quirky. Jeff, who was already on the job here, called last December when he found out that Judge Brower needed another legal assistant, someone who could come in a big hurry to work through a mountainous case starting January 5th. Mark flew out to interview on December 13th, was offered the job on the 18th, and flew over with me and our two kids on January 2nd.

“But my wife didn’t mind at all,” Mark said into the dictaphone, laughing. “She was on her mission here in the Netherlands, and she’s been dying to come back here.” Quite true.

I asked if it had been difficult working with the Iranians. “Is there some lingering hostility here at the Tribunal?” I read the question from my notepad and looked up at them, remembering the reserved, makeupless faces of the Iranian secretaries in their shawls—shy and sizing me up at first, but then warming to me today as I gave them the thank-you note to give the Iranian judge who had given us a present for our new baby. They told us the judge’s wife had just had her baby too, and I seemed to feel the universal feminine truth that birth is hard and sweet as they told me, “No, she did not have a hard time, but when is it ever easy?” I wondered if things were more hostile when business was going on.

Jeff was eager to assure me, “Well, on a personal level I would say there’s none. Everybody’s friendly and cooperative.”

Mark said, “In the first few years it was pretty tense here. They originally met in the Peace Palace. That’s where the International Court of Justice meets, and the ICJ had, just before the hostage settlement, ruled against Iran and ordered it to release the hostages and make reparations. That order was ignored but was not forgotten. One room contains

ornate needlepoint chairs of all the member states of the ICJ, and during the hearings, someone, apparently on the official delegation, had slashed up the chair bearing the needlepoint seal of the United States. That gives you a feel for the nature of relations in the early days, when the U S was commonly labeled ‘the Great Satan.’ I think the ‘Great Satan’ attitude prevailed even among the first judges Iran appointed to the Tribunal, whose published opinions are full of personal attack on the character of the other judges and claims of bias, illegality, and so forth, rather than a reasoned appraisal of the legal issues. They challenged the impartiality of one third-country judge from Holland on the ground that, as a citizen of a member country of NATO, he was necessarily a lackey of the Americans. Another unsuccessful attempt to disqualify on legal grounds another third-country judge, from Sweden, led to the infamous incident back in September 1984, when two of the Iranian judges attacked the Swedish judge in the stairway at the Tribunal and attempted to strangle him with his own necktie. That incident virtually closed down the Tribunal for several months until the two judges were recalled to Iran. It seems that is a past period at the Tribunal as their replacements are dignified, competent lawyers who concentrate much more on the legal issues, and the Tribunal atmosphere is businesslike and friendly. It’s hard to imagine what it was like then.”

But had they made friends with any of the Iranians or had much to do with them socially? I asked them, as a reporter.

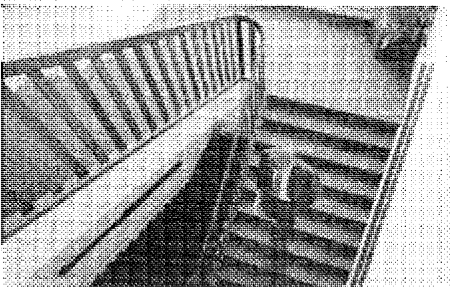
Jeff said, “The Iranian legal assistants will sometimes come to informal Tribunal social functions—going-away parties and so on, but the arbitrators generally do not, presumably for political reasons.”

Mark added, “They say that they can’t come because they can’t be seen anywhere where alcohol— forbidden by Islamic law—is served.”

“A compunction that doesn’t bother us,” Jeff observed.

Mark continued, “We are friendly when we do meet outside the tribunal context. For example, Ms Reporter, we met Judge Ansari, the Iranian judge in our chamber, at the playground the day before we had our third baby. Becky and Katie were running around and playing on the slide, and Judge Ansari came walking up with his wife, who was also pregnant, and their little boy, who is about the same age as our second. We stood and chatted with them, and it was very friendly. We’ve met at the grocery store a couple of times. But we’ve never quite felt we could venture to invite them over for dinner or anything really personal like that. It just feels like it would be too awkward or inappropriate, maybe even politically risky for them.”

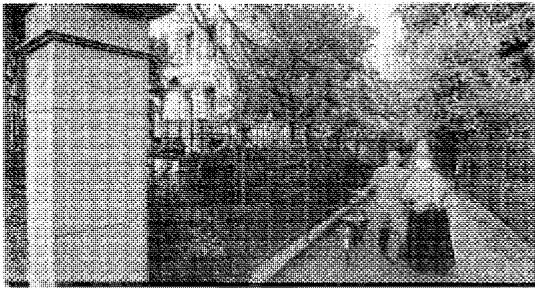
But despite its name, the Tribunal is not made up just of Americans and Iranians. One thing Mark and Jeff have found particularly exhilarating about working at the Tribunal is the mix of people—there



are staff members not only from the U.S. and Iran, but from Sweden, France, Pakistan, Sri Lanka, England, Ghana, India, and Bolivia, to name a few. On a given day, Jeff may argue with Sylvia, a legal assistant from Poland, about whether you can actually order a government to do anything—something that seems impossible to someone from Poland—or Mark may talk about Maori culture or compare the merits of wilderness hiking trails with Jennifer, a legal assistant from New Zealand. Into the office may come Mr. Khan, dark and imperious in his gaze, bringing the mail, or Nancy, an American secretary who is also an opera singer, with the filing.

Do they ever feel intimidated by the cosmopolitan atmosphere?

“No, in fact my small-town Utah origins bring out other people’s small-town origins,” Mark said. “We had some friends from the Tribunal over for dinner at Christmas, and the missionaries were there, too. One



elder, who was from Smithfield, Utah, had never heard of Sri Lanka, where another one of our guests was from. We got out a map to show him, amid general good-natured teasing. And Jennifer, from New Zealand, said it was okay—Srilal, the friend from Sri Lanka, had probably never heard of Smithfield either. And there are other things. One person always reports to me on the BYU football scores—a little embarrassing since I don’t keep track myself.”

I asked Mark and Jeff what some of the more notable cases were that they had worked on.

Mark looked off at the boxes of files on the shelves surrounding us and said, “The big case that I originally got the job to come and work on was about an American company seeking about \$200 million in damages for a factory they had constructed. But the Iranians said the Americans had bribed government officials to get the job and that the bribery should be considered to deprive them of any right to payment for the work they had done. The American company said that they hadn’t bribed anybody—million dollar commission payments to professional Iranian consultants and business-getters were necessary and usual—and that if, contrary to their agreement with their consultant, he may have passed a minor few millions here and there, well, bribery was a regular, and usually inescapable, part of business deals under the Shah. Ultimately the decision in the case went for the Iranians, but not based on any of the moral or legal issues raised by the alleged bribe, but on a relatively technical jurisdictional ruling by the third-country judge.”

Jeff said, “Well, that was the same case where the parties had years to submit their evidence and had been scheduled for a final hearing three different times and each time postponed, each time giving the parties further opportunity to complete their final briefing. And about two months before the final hearing, the Iranian party submitted a one-sentence letter stating that they had found a little new evidence they wanted to submit to the Tribunal. And the chairman of the chamber, that is, the third-party judge, without consulting either of the other two judges, granted the request, and what we saw come in was a stack of ‘a little new evidence’ about three feet high. Virtually all of it could have been submitted earlier.”

“But one of the most interesting cases I have worked on involves a claim for a complex industrial plant co-owned by the American claimant. The Americans were allegedly forced off the job during the revolution, then not permitted to return afterward. The Iranian government subsequently offered to buy the plant, but never paid any money, and finally just took over day-to-day control and operation of the plant. Shortly after that the Iran-Iraq war started, and the Iranian government now asserts that the plant has been bombed into virtual non-existence. The claimant argues it’s entitled to the multimillion dollar value of the plant as it stood when the Americans left Iran, Iran says it shouldn’t have to pay anything, but the Americans should repay various asserted debts and obligations. The case is interesting because it raises such a broad spectrum of legal issues about governmental expropriation and compensation, force majeure, valuation of complex assets, and so on. The case is still undecided.”

I asked, “Have you had experiences here that have given you a clue into the Iranian soul, or what life is like in Iran right now?”

Mark said, “What we see here at the Tribunal is, it seems to me, very removed from what’s going on in Iran right now. We’re dealing with things that happened in 1978–1979, a time when there was an emotionally charged and ideological revolution going on, and actions were taken against U.S. citizens and businesses that were clearly and virulently anti-American. Now, in the calmer context of nearly ten years later, those uncontrolled, undirected, and even unintentional actions have to be painted by the Iranians as the legitimate rights of sovereignty. And they have to be fitted by the Americans into the rubric of unjustified contract breaches or expropriations. That’s probably not how it was perceived by either side when it was happening.”

“One incident came up in a case that really gave me a feeling for what it must have been like for ordinary Iranians mixed up in it all. An American building company, building houses in Iran, left one of the Iranian employees in charge. He was told to pay all the salaries of the Iranian workers that they had employed there, and if he needed to he should sell some surplus tents and scrap lumber. But when this

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ACCORDING

TO MARK, WHO

IS MORE A

BELIEVER IN

SERENDIPITOUS

QUIRKS OF

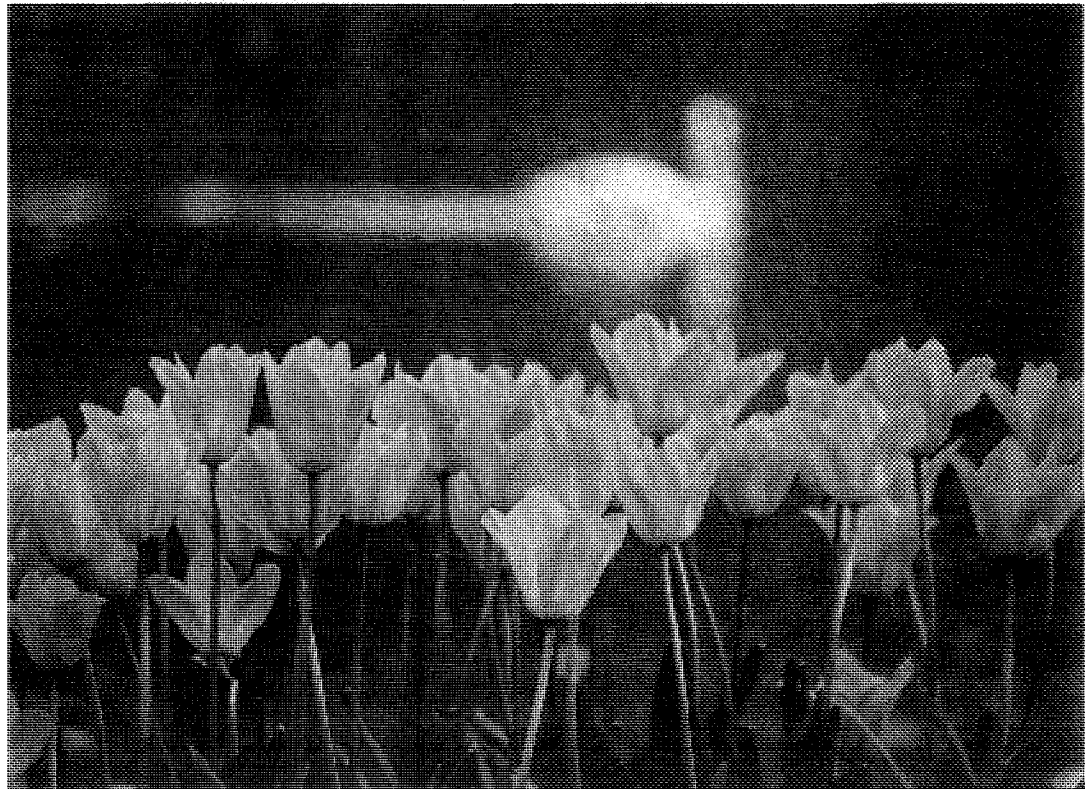
FATE, IT’S ALL

A MATTER OF

BEING LUCKY

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THE SUMMER
 IS WONDERFUL
 THE SUN SHINES
 UP NEARLY ALL
 NIGHT YOU CAN
 GO TO THE BEACH
 AND THE CHILDREN
 ALL PLAY TOGETHER
 HOME THERE
 IS A WELL KNOWN
 IS WITH THE
 ALL SUMMER
 PEOPLE



guy tried to sell the items, he was arrested, apparently for theft of public property, since the government had taken control of the site and materials on site. And so he wrote an extremely pathetic telex to America saying, 'Do you remember me? You told me to sell the tents, and I'm in big trouble,' in his broken English."

I said, "You mentioned that case where the plant was bombed; has the Iran-Iraq war hampered their efforts in other ways?"

Mark said, "They say it does. It's the continuing reason for most every extension request."

Jeff elaborated, "About a year and a half ago, Iraq announced an air-exclusion zone around Iranian and Iraqi territories, saying they would take hostile action against any aircraft in that zone,

including private or nonmilitary jets, and this was stated as a reason that inhibited the flow of documents and witnesses between Tehran and The Hague. There was one hearing that took place during that period where it was claimed that the Iranian lawyers could not be present, probably for this reason, or for other similar ones. But the U.S. agent stated that he had seen the Iranian counsel waiting at a tram stop in The Hague, probably doing some shopping." Jeff laughed and leaned back in his chair. "It also shows up in the context where they'll say these documents or this

equipment or this material related to the case is located in the war zone, and we don't have access to it."

Mark said, "Or was blown up, like that plant. Some of the cases involve former American property that was taken by Iran, and the defense has been 'that stuff was taken from us by Iraq so why should we have to pay for it?'"

At this point Jeff's phone rang, and we waited while he answered it. When he was finished he explained, "That was about another extension request—the sixth extension request for this particular document. In granting the last extension, the Tribunal said it envisioned no further extension—but this one is for fifteen days only, and they say it is all ready, and they just need to finish typing it up and translating it. But the language that was proposed for the order says that the Tribunal will grant a final extension, and Judge Ansari objects to the word 'final.'"

Mark joked, "Of course, we're objecting to the word 'grant.'"

Looking out the window from Mark and Jeff's office you can see trees and gardens surrounding one of the mansions on the Parkweg, the street the Tribunal is on. Mark says he often finds himself staring out the window, wondering if he'll ever have as nice a view from his office again after he leaves here. The part of The Hague where the Tribunal is located and where we live, and the Robinsons just around the corner from us, is known as Scheveningen. It's close to the beach. In the summer it is a resort town, and in the winter it is windy and cold, with the Dutch sky hanging low, bringing rain and the smell of

the ocean wafting out through the narrow, brickpaved streets. When the fog comes in, Mark and Jeff can even see it rolling down their office windows, like the final plague in the movie *The Ten Commandments*.

I asked them to give me their opinions on living here in The Hague. Mark said, "The Hague is a nice place to live. The weather is not as bad as people say. The summer is wonderful. The sun stays up nearly all night. You can go bike riding after dinner, at seven o'clock, and not come home until eleven, which is what we did all summer long. In the winter it's cozy and friendly, because Dutch people make a point of doing cozy, friendly things during their abysmal winters."

The neighborhood is tidy and fine and very Dutch. Walking from our house to the Tribunal, on a day like today, you would pass the bike stall where we keep our bicycles and then a little tidy grocery store, where a brusque and pointy woman stands behind the counter with her fingerless gloves, sovereign over the bowls of tiny peeled potatoes and fruit salad and hutspot in the glass case beneath her. She asks you, man-to-man, what you want, leaning there, all serious business, looking up her pointed nose at you. The apples and oranges and peppers in the bins outside are arranged in diagonal stripes in their crates, a thin red meshing over them as a precaution against casually passing high school students from around the block. There are flowers too, bunches of tulips and chrysanthemums in all shades, with their long stems in metal buckets and a chalkboard next to them with the prices written on it. Then there is a ladies' hat store, with little tabs of hats with feathers and sometimes a poof of netting for little blue-haired ladies to try on before the mirror, and smile primly at themselves, imagining the effect in the third pew next Sunday in the Hervormd Church in Scheveningen. And then there is a gentleman's hairdresser, with an inexplicable wooden model of the Eiffel Tower in the window.

And then there is the bakery, its front window a-gaggle with inedible dainties: pink and hard and glistening candies, little wrapped Christmas bonbons with glitter-covered ruffles, ingenious chocolates, and marzipan carrots. Only around this time of year does it look so clever, far too clever to eat. Once New Year's is past, out come the humble apple tarts and currant buns and plain brown cookies, rich and earth colored and again lowly enough for mortal mouths.

And then you turn left down a short piece of street, a little one-way alley, and you can look through a chain link fence into someone's yard, see their holly bushes and the robins chirping in a weathered porch that perches on leaning stilts above a locked wooden shed. After the alleyway you cross a street and go down a walking path—marked with a little round blue sign, a round blue sign with the white silhouette of a man in a long coat and derby walking with a little girl in a dress and pigtails, a grandfather stooping along with his granddaughter, a wistful, helpful,

loving old fellow always out with the little girl, telling her about when he was young and a fisherman, and brought in his nets here in Scheveningen, and braved the storms, and she, listening kindly, holding his gnarled hand, waiting for a pause, and then asking if they might please go into the bakery and buy a sack of licorice. And they do, the tired old man smiling gently and patting the little golden head. The walking path goes past lawns and backyards and holly bushes right up to the front of the Tribunal building.

I was on my mission here nine years ago. I have dreamed all these years of coming back, but I never thought it would happen like this. Mark now speaks, as one friend of ours put it, "A nice little mouthful of Dutch," and our six-year-old Becky, who goes to first grade in a Dutch public school, is very fluent, and even falls into fast and sputtery Dutch when she gets mad at us. She is Mark's best teacher—laughing mercilessly at

his mistakes. Luckily he is a good sport. [Mark also speaks Italian and Russian.] Jeff and Robyn, his wife, have learned quite a bit of Dutch too, they have had too—Robyn was called as first counselor in the Relief Society right off the bat and was only released last summer when Jeff was called to be in the bishopric. All of the work at the Tribunal is conducted in Farsi and English, so any education in Dutch we get comes from Church and from our neighbors, as well as the backs of milk cartons and cereal boxes on the breakfast table.

I asked Jeff what he thought about living in The Hague. "Are you anxious to go back?"

"No, not really, although I am looking ahead to the next phase of my career, but I'm not anxious to leave The Hague, because I really like it here. We live in a nice townhouse just a five-minute walk from work on a tree-lined street with a canal with ducks in the summer and ice skating in the winter."

I asked Mark and Jeff where they were going from here. Jeff said he hopes to know for certain next month, but, in any case, he and his family were returning to the States in April. Mark said, "As you well know, we own a house in Washington, it's got lots of blood, sweat, and tears in it because we just finished remodeling it before we left, so we're going back—most likely next December."

"Are you going to keep working in international law?" I asked.

Mark answered cheerfully, "If such a thing exists." (Chuckles and exchanged glances.) "Yes. This is a unique situation, especially, I think, at our time out of law school and our experiences. This is an uncommon concentration of international law experience that you just couldn't get anywhere else."

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P.S. This article was written last January. Jeff and Robyn and their kids moved to Orange County, California, in April, where Jeff works for the Newport Beach office of Gibson, Dunn, & Crutcher. Mark has been called to take Jeff's place in the bishopric of The Hague ward. We are staying on until December, and then we will go back and live in our house in Takoma Park, Maryland, and Mark will go back to work for Steptoe & Johnson in Washington, D.C.

Reducing the discretion

ABANDONING

of authority figures can

CHILDREN TO

deprive children of affirmative

THEIR RIGHTS

support and guidance.

Bruce C. Hafen

The American civil rights movement of the 1950s and 1960s did not view the nation's children as a discrete minority group. Since the early 1900s, the policy assumptions and the institutions of the "child-saver" era had regarded children as legally privileged rather than disadvantaged. Massively funded public education, a juvenile court system based on children's special needs, and a strong state commitment to protecting children against harm from parental neglect or from their own delinquency indicated that "children's rights" of many kinds had long been recognized. Children thus seemed to have little need for protection against discrimination, because they were seen as the beneficiaries of a special legal status.

Excerpted and reprinted from *Harvard Law Review*, December 1986. A review of Robert Mnookin's *In The Interest of Children: Advocacy, Law Reform, and Public Policy* [1985] by Bruce C. Hafen.¹



Civil rights workers soon began to see, however, that the effects of racial discrimination and poverty were especially harsh when visited on the children of disadvantaged families—not because of actual discrimination against children, but because children's natural dependency was aggravated by the economic and political impotence of their families. Lack of public services for children in minority groups thus became a focal point for the reform of laws and institutions providing child care and juvenile justice.

Other sources of concern about children also provided motivation for reform. For example, a heightened awareness of the needs of other dependent persons increased the public's concern for the inherent vulnerability of children. A growing skepticism regarding discretionary institutional power also raised doubts about the use of paternalistic authority in public schools and juvenile courts to determine the best interests of children. And the egalitarian trends of the day suggested to some observers that the very concept of minority legal status might, like distinctions based on race or sex, be a source of discrimination rather than advantage.

American governmental and legal institutions responded to these developments in several ways. Large-scale responses such as the war on poverty gave new attention to the need of all children for the threshold necessities of physical care and protection from parental abuse. Various forms of protection from institutional abuse were also initiated, often through new litigation techniques that challenged the authority and the methods of state agencies. Public schools and juvenile courts adopted new procedural standards, which clarified when and how state agencies should regulate the behavior of young people or intervene in family life. During this same period, a constitutional amendment lowered the voting age to eighteen, and courts began to describe in constitutional terms the legal rights of children in cases ranging from abortion to free speech, which encouraged the perception that children were entitled to greater personal autonomy.

The nation is currently examining itself to see how, and even whether, these and related reforms produced net gains for children and families.² The Mnookin studies are part of that self-examination.

One general theme of the post-“child-saver” era reforms since 1960 has been a loss of faith in paternalism, reflected in attempts to reduce all forms of discretionary authority. The due-process model has become popular in part because it appears to contribute to reducing discretion. Especially when children are involved, however, a reduction in the discretionary judgment that authority figures may exercise creates a vacuum that deprives children of an affirmative source of support and guidance. Indeed, as *Bellotti v Baird* illustrates, an overriding commitment to due process can abandon children to their procedural rights.³

The reality underlying the concept of minority status is that children lack the capacity to formulate reasoned judgments. Their inherent dependency thus creates an obvious need—indeed, a “right”—to affirmative nurturing and special forms of protection. John Locke believed parents

were obliged by “Nature” to “nourish and educate” their children until their “understanding be fit to take the government of [their] will.”⁴ In this way, he argued, the young are prepared to meet the demands and partake of the opportunities of adult life as mature and rational beings.⁵ Thus, Locke concluded, “we see how natural freedom and subjection to parents may consist together, and are both founded on the same principle.”⁶

This basic children's need was described by Henry Foster and Doris Freed in their proposed “Bill of Rights for Children” as the “moral” as well as “legal right [to] receive parental love and affection, discipline and guidance, and to grow to maturity in a home environment which enables [the child] to develop into a mature and responsible adult.”⁷ Empirical studies establish “the need of every child for unbroken continuity” in parental relationships. Such stability is “essential for a child's normal development.”⁸ A conviction that this sense of belonging is critical for a child's normal development underlies the generally accepted policies discouraging state intervention in ongoing family relationships. A commitment of mutual trust is also an essential element in transmitting to children moral norms, cultural values, and judgmental as well as intellectual skills.

A child's right to be protected from his or her own immaturity is concomitant with this right to belong. Of course, each child needs gradually increasing freedom to make important choices, even at the risk of harm from some bad judgments. The capacity to weigh risks in making personal choices is only developed as children live with, and learn from, the unpleasant consequences of their decisions. Thus, adolescence should be seen as the learning years, a time in which children are given low-risk levels of autonomy as a way of learning how to assume greater responsibility.⁹ Still, in a paradoxical but important sense, a child has a basic right to be protected against complete freedom.

With our loss of confidence in paternalism, however, a subtle but important shift has occurred in the public mind away from a commitment to the right of children to belong and to be nurtured. We seem increasingly unsure, for example, whether kinship and marriage are valuable ties that bind, or sheer bondage. Laurence Tribe contends that future legal developments will lead to a “liberation by the State” of “the child—and the adult—from the shackles of such intermediate groups as the family.”¹⁰ In this vision, no person would “belong” to any other person through kinship or formal marriage, because such belonging is thought to undercut personal autonomy. Professor Tribe maintains, however, that being “liberated from domination by those closest to them” raises an “urgent need” for legal recognition of “alternative” relationships that “meet the human need for closeness, trust and love” in the midst of “cultural disintegration and social transformation.”¹¹ Professor Tribe has not yet explained how alternative relationships can both meet a child's need for nurturing and belonging and yet protect her from the “shackles” of long-term commitments.

Similarly, some commentators have argued that



We owe them as much, not because they belong to us, but because we belong to them.

children must be “liberated” from minority status or from other age-related legal limitations,¹² sometimes drawing parallels between the inferior statuses of slaves, women, and children.¹³ The reform movement for children’s rights, especially in its approach to group litigation and its reliance on constitutional theories, has borrowed extensively from the legal experience of the civil rights movement, risking some uncritical transfers of egalitarian concepts that ignore children’s lack of capacity and their need to be protected from their own immature development.

The findings of Robert Mnookin and his colleagues suggest that, for the most part, child advocacy litigation cannot by itself be held responsible for recent changes in

either adult attitudes toward children or in institutional environments affecting children. Legal developments are intertwined with larger social changes.¹⁴ In addition, the Supreme Court’s attitude toward liberationist arguments in children’s cases has become more cautious in recent years.¹⁵ Yet our developing vision of children’s legal rights is malnourished, because it fails to support both the social and parental assumption of affirmative child-rearing duties. The law’s reluctance (or inability) to enforce affirmative duties in intimate relationships forces us to rely on voluntary fulfillment of responsibilities. But, ironically, the increased visibility of our reliance on procedural enforcement powers may also create the illusion that adults owe children only what the legal system demands of them.

Our present collective tendency to neglect children’s right to developmental protections and opportunities has been documented in recent nonlegal literature. For instance, Marie Winn’s *Children Without Childhood* describes “a profound alteration in society’s attitude toward children,”¹⁶ tracing the connections between a general erosion of institutional authority, the instability of marriage, the sexual revolution, and the emerging tendency to treat children as if they had the capacity

for unrestricted adult experience.

Neil Postman reached a similar conclusion, finding that contemporary television’s attempts to appeal to mass audiences erases the traditional dividing line between adults and children, thereby undermining the normal psychic maturation of children.¹⁷ Educational researcher Gerald Grant also found in his field studies that public school students and teachers “no longer have any agreement” on what “morality ought to be,” or they “feel that any attempt to provide it is a form of indoctrination,” because we are “declaring—even insisting—that children are adults capable of choosing their own morality as long as they do not commit crimes.”¹⁸

Adults face conflicts of interest in thinking about legal rights for children. When we set our children free, we also set ourselves free from certain responsibilities we have traditionally assumed in the interest of children. Child rearing has always made heavy demands on the time, energy, and financial resources of both parents and communities. To escape those demands by giving "rights" to our children is a beguiling invitation. The notion that we should respect their autonomy enough to leave them alone provides easy justification for adults whose personal convenience is also best served by remaining aloof. Thus, some school personnel may find it not worth the patience required and the frustration involved to provide meaningful discipline. Marriage partners may think it unimportant that they cooperate with each other in the interest of their children. Unmarried fathers may not feel an obligation to marry or to provide support. Parents may be unconcerned about employment or leisure-time interests that conflict with a child's needs. These noncommittal attitudes may also be encouraged as more parents live in unmarried relationships they regard as impermanent, in which they are less likely to invest themselves in long-term reciprocal patterns that maximize the quality of child development.

The preference of many adults for a casual sexual environment may also encourage adolescent sexuality in ways that illustrate the conflict between adult interests and the needs of children. For example, a team of distinguished researchers in adolescent pregnancy concluded a large study of increasing pregnancy rates with the observation that "For ourselves, we prefer to cope with the consequences of early sex as an aspect of an emancipated society, rather than pay the social costs its elimination would exact."¹⁹ Unfortunately, most of the benefits of that emancipated society are for adults only, because premature emancipation for children is so often harmful to them.

The excessive paternalism of the child-saving movement may have been misguided because of the extent to which it allowed state agents to assume the discretion associated with a parental role. But our children need more than the vacuum created by reduced discretion. They also need protection from the uncritical transfer of skepticism about institutional authority in general to the institution of the family.

The preamble to the Constitution expresses the vision of "securing the blessings of Liberty" not only "to ourselves," but also to "our Posterity." This statement captures the connection between the sacrifices we make in defining our own liberty and the blessings we secure for our posterity. As part of our public policies for children, adults should be encouraged to undertake the unenforceable responsibilities of nurturing, disciplining, and teaching children toward responsible maturity. We owe them as much, not because they belong to us, but because we belong to them.

ENDNOTES

- 1 Albert Solnit is credited with the phrase "Abandoning Children to Their Rights." A. Solnit, panel discussion remarks at Child Advocacy Conference, Madison, Wisconsin (Sept. 26, 1975).
- 2 E.g., C. Murray, *Losing Ground: American Social Policy, 1950-80* (1984); D. Ravitch, *The Troubled Crusade: American Education, 1945-1980* (1983).
- 3 443 U.S. 622 (1979). The Supreme Court directed lower courts to provide hearings, if requested, to determine (1) whether a pregnant minor is "mature," in which case she should make her own abortion decision, and (2) if she is not mature, whether an abortion is in her best interests. Field research two years after the decision showed that all of the 1,300 pregnant minors who sought judicial approval for an abortion without parental consent eventually obtained an abortion (Mnookin, p. 239).
- 4 J. Locke, *The Second Treatise of Government* § 59 (1952).
- 5 *See id.*
- 6 *Id.* § 61.
- 7 Foster & Freed, "A Bill of Rights for Children," 6 *Fam. L. Q.* 343, 347 (1972).
- 8 J. Goldstein, A. Freud, & A. Solnit, *Beyond the Best Interests of the Child* 6, 31-32 (2nd ed. 1979).
- 9 *See* F. Zimring, *The Changing Legal World of Adolescence* (1982).
- 10 American Constitutional Law 988 (1978).
- 11 *Id.* at 988-89 (1978).
- 12 For example, the chair of the ABA section on Individual Rights and Responsibilities proposed "that we consider the logical and ultimate step—that all legal distinctions between children and adults be abolished." Manahan, "Editorial: Children's Lib," 3 *A.B.A. Sec. on Indiv. Rts. & Resps.* (Spring 1976).
- 13 *See* sources cited in Hafen, "Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their 'Rights,'" 1976 *B.Y.U. L. Rev.* 605, 651.
- 14 This point is best developed in the chapters on *Goss v. Lopez* (Mnookin, p. 449-508).
- 15 *See* Hafen, "The Constitutional Status of Marriage, Kinship, and Sexual Privacy—Balancing the Individual and Social Interests," 81 *Mich. L. Rev.* 463, 511-17 (1983).
- 16 M. Winn, *Children Without Childhood* 5 (1983).
- 17 *See* N. Postman, *The Disappearance of Childhood* (1982).
- 18 Grant, "The Character of Education and the Education of Character," 18 *American Education* 135, 146 (1982).
- 19 M. Zelnik, J. Kantner, & K. Ford, *Sex and Pregnancy in Adolescence* 182 (1979).

Supreme Court Clerks: What They Did, Where They Are Now

Since its beginning, the J. Reuben Clark Law School has produced four U.S. Supreme Court clerks. Each of the clerks, beginning with one from the charter class of 1976, has served a year's term with a Supreme Court justice and carried away the experience to his chosen career in law. The following are brief accounts of the tracks the clerks have followed during and after their significant experiences with the U.S. Supreme Court.

Monte N. Stewart

Monte Stewart clerked for Chief Justice Warren Burger during the 1977-1978 term. However, it almost never came to be. Before the chief justice reviewed Stewart's application, Stewart had given up hope of a Supreme Court clerkship. He had dutifully submitted applications with Justices Rehnquist, Powell, and White, and Powell and Rehnquist had granted him an interview. Both, however, declined to offer him a clerkship.

"Justice Powell's rejection letter was the nicest I've ever received," said Stewart. "He's the quintessential Southern gentleman. It almost made me feel good."

The chief justice was the only remaining possibility, but Stewart and his wife, Anne, considered withdrawing his application "because of Anne's concern the clerkship would be like law school."

"We decided not to withdraw the application mainly because we thought it was such a long shot and that it was virtually certain I would not get the clerkship," he said. They were wrong. "I learned later that Powell told the chief about me and said some very favorable things," Stewart said.

The chief justice sent one of his clerks west to interview Stewart. The visit turned out favorable, so Burger called on Judge J. Clifford Wallace of the Ninth Circuit, for whom Stewart had previously clerked. "The chief justice visited with Wallace to see what kind of clerk I had been, and Judge Wallace went to bat for me," he said. Two weeks later, Stewart received word he had been selected.

In July 1977 his family moved to the Washington, D.C., area. Stewart described the following year there as "wonderful" for his family, the experience being much more tolerable than law school. "I worked hard. The pressure to keep up with deadlines was great, but we did manage to keep abreast of the work."

Stewart's coclerks consisted of one midwest Jewish graduate from Harvard, a southerner from the University of Virginia, and one "all-American kind from everywhere," who was also a Harvard graduate. "I was the Mormon from Las Vegas," Stewart said.

"I came to like the chief very much—he was warm, friendly, personable, and even fatherly toward us."

Stewart said he learned from reading the briefs of then Solicitor General Wade McCree that a simple, direct, conversational style of writing was the best

A Supreme Court clerkship has a way of changing one's possibilities. At the time the charter class was donning graduation caps and gowns, there were no firms coming on campus to interview. "It was tough—nobody could get a job with a big firm," said Stewart, "no matter what your credentials were, even if you were editor-in-chief of the law review and top of your class. We plastered one room of the law review with rejection letters from big firms."

"Suddenly (after the clerkship), I'd get telephone calls out of the blue from senior partners of top firms around the country calling as if we were good buddies and wanting to see if I would go with their firm."

Stewart stuck with the firm that originally hired him out of law school—Gibson, Dunn & Grutcher in San Diego. In 1981 he moved to Las Vegas to join his uncle's firm, Heaton & Wright. His uncle died in October of 1982, and the following May, Stewart formed his present firm—Wright, Shinehouse & Stewart. The firm started with three lawyers, has six now, and expects to have eight by the end of summer. Stewart's practice encompasses civil litigation, business, and some antitrust, but no domestic law or personal-injury cases.

Stewart and his wife have seven children, all boys.

Eric Andersen

Eric Andersen followed close on the heels of Stewart, also clerking for Judge Wallace on the Ninth Circuit and applying with Justice Lewis Powell (for the 1978-79 term). This time around Justice Powell

opted for a BYU graduate. Andersen said part of the reason he received the clerkship was Powell's personal "affirmative action" policy in recruiting clerks. Powell generally secured three clerks from the more prestigious law schools, and then he would be "willing to go with a lesser-known school." The justice would go out of his way to give the top students of lesser-known schools a chance for a clerkship, and Andersen, being in BYU Law School's second graduating class, filled Powell's fourth spot. Andersen added that a recommendation from then university president Dallin Oaks, who had ties with Powell, was an additional boost.

The term followed in the shadow of the *Bakke* case, so the media did not publicize it as heavily as previous ones. "Amazingly enough, we did not have any death-penalty cases," Andersen said.

After the clerkship, Andersen stayed in Washington, D.C., with the firm of Vinson & Elkins, where he had previously clerked. The firm soon had an opening in its London office, and Andersen and his wife, Catherine (a Law School charter-class graduate), jumped at the idea and were off to England.

The thrust of Andersen's practice in London came from the natural resources of the neighboring North Sea. "I was involved in international oil and gas law, drafting contracts relating to joint ventures or petroleum sales or leases with government. I worked with the Danish government and their national oil company and helped them draft contracts."

In 1984 Andersen decided to leave the world of professional practice and enter the halls of academia.

"Ever since law school, I had wanted to be a law school teacher," he explained. "My interest had always been strong in teaching. After a while, we knew we'd have to make the jump sometime from practice to teaching so we wouldn't get too used to the lifestyle and salary of practicing."

Andersen and his family decided the time was right and left London so he could join the faculty of the University of Iowa's College of Law. "The single most important thing for getting a job teaching was the clerkship with Powell," Andersen said.

He is now an associate professor and teaches two first-year contracts courses and a family-law course. Catherine also is involved with the college, assisting with the first-year legal writing program.

Andersen has just finished an article about good faith and the enforcement of contracts and is submitting it for publication.

"I'm happy with the jump to teaching, and I certainly intend to stay a long time. I still miss the excitement of practice, but the first three or four years of teaching are really not less busy than practicing."

Andersen spends his free time with Catherine and their three children.

Kevin Worthen

Kevin Worthen, the third graduate to clerk with the Supreme Court, is now in Phoenix as an associate in the natural resources department of the Jennings, Stouss & Salmon firm.

Worthen splits his time three ways between Indian law, appellate courts, and environmental law.

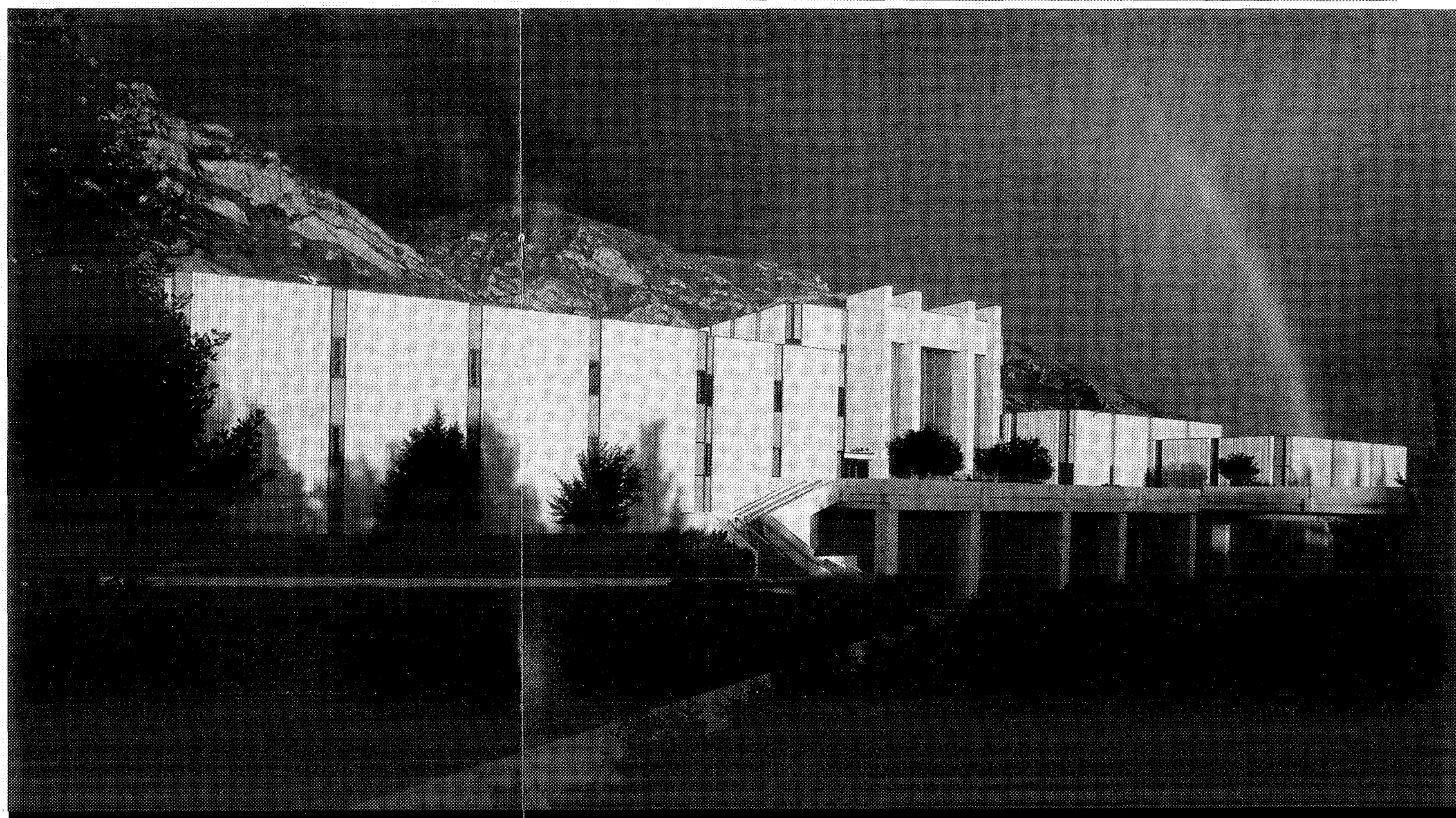
Of the three, Worthen most enjoys Indian law. "It's a new area of law with few court decisions. It's about Constitutional issues, and most of the issues that come up deal with the rights of Indians and government regulation. It's sort of an uncharted area of law for someone to practice in."

The roots of Worthen's practice in Indian law were planted in law school. "The school offered an Indian law course, so I took it," he said. "They cleverly disguised it as a horizon course. It was more valuable practically than other horizon courses, and it sparked an interest."

The interest grew while Worthen clerked for Justice Byron White through the 1983-84 term. During that time three or four Indian law cases, which Worthen found "particularly interesting," reached the Supreme Court. After the clerkship he headed southwest to Phoenix, where the practice of Indian and environmental law flourishes.

Worthen recounts that during his clerkship he spent roughly half of his time working with writs of certiorari and the other half writing short summaries and writing and drafting opinions. He described what he learned as "probably of limited practical value. I learned to know what judges look for, although it's often an individual matter and varies with each judge. It tends to be judge specific."

The justices themselves were friendly to the other clerks, Worthen said. "Rehnquist and Brennan made a point to get to know



the other clerks. Burger and Marshall made little effort, and the others fell in between."

As far as opening new possibilities, the clerkship "opened doors I didn't walk through," Worthen said.

"Teaching positions were a lot more available. I talked to a couple of universities, but I decided not to do it. I also interviewed with some firms in Washington, D.C., who wouldn't have talked to me except that I had clerked with the U.S. Supreme Court."

Michael Mosman

Michael Mosman is the most recent graduate to have clerked for the Supreme

Worthen, his wife, Peggy, and their two-year-old son just moved into their new house. (They're expecting their second child in July.) Worthen spends much of his free time landscaping the yard, a task he feels has turned out to be "harder than I ever thought."

Worthen will be joining the BYU Law School faculty in August.

Court. On completing the clerkship, Mosman "wanted to go to the smallest city that had a good legal system" and consequently is now in Portland as an associate with the Miller, Nash, Wiener, Hager & Carlsen law firm.

The firm's emphasis includes general legal practice, work for timber companies, import and export in the Pacific Rim, and political work in the Portland area. At an individual level, though, Mosman says, "I carry

partners' briefcases and lick envelopes."

A bit more serious, he adds, "I'm trying to learn to be a litigator, but I don't have a particular area of emphasis. I'm not ready to decide yet—I'm sort of all over the map."

When not at the firm's offices, Mosman, his wife, Suzanne, and their three children enjoy the luxury they could never previously afford: time.

"Saturday mornings we tend to take off. We'll usually go to the coast or the

mountains. Our neighbors complain that I don't mow the lawn, but I'm trying to make up to my family the time I've been away the past few years."

Mosman graduated in 1984 and has spent the intervening years clerking, first for Judge Malcolm Wilkey on the D.C. Circuit and then for Justice Powell during the 1985-86 term.

"The two years in Washington, D.C., were a fantastic experience. I worked hard for Judge Wilkey, and I worked

harder than I cared to for Justice Powell. But I know we'd do it again without question or hesitation."

The Supreme Court work was exhaustive, though Mosman said that Powell never demanded anything that was unnecessary. Mosman would arrive at about 6 a.m. so he could leave earlier and spend part of the evenings with his family. The justice, who came in six days a week and worked from 9 a.m. until after 6 p.m., accommodated Mosman's schedule.

"The year before Powell had an operation," he said "Although his physical stamina is not what it has been, it still is good. And his mental ability has not diminished one bit "

Mosman also describes Powell as the classic Southern gentleman. "We had more capital-punishment cases last term by far than any since 1976 During the times when they came in, there was no way we could leave for anything—Powell knew that One time, however, my wife was sick Powell knew we had three children and found out that my wife was ill. So, he insisted on paying out of his own pocket for a private professional nurse to come in and take care of my wife and the children while I had to be away working for him

"We ended up not using the nurse, but it was all set up He wouldn't take no for an answer Powell wouldn't feel comfortable keeping me there while my wife was sick "

After working with some of the top legal minds in the country, Mosman summed up the preparation of his legal education at Law School: "I went into both my clerkships really concerned about how a BYU graduate would stack up against graduates of the best schools in the country I felt that the training I had at BYU prepared me to go toe-to-toe with those people I was really pleased to see that I didn't feel shorted It wasn't because I took any special advantage of possibilities during school. Anyone who puts a decent amount of effort into law school at BYU will come out with the same training as any prestigious school graduate "

Lawrence J. Jensen Receives Alumnus Service Award

Lawrence J. Jensen, currently an assistant administrator for the Environmental Protection Agency (EPA), received the 1987 Alumnus Service Award during the J. Reuben Clark Awards Assembly on March 19

Jensen, who is a graduate of the charter class of 1976, has been an active supporter of the Law School since his graduation He has helped students find employment in government service and served on the school's Board of Visitors from 1984 to 1986

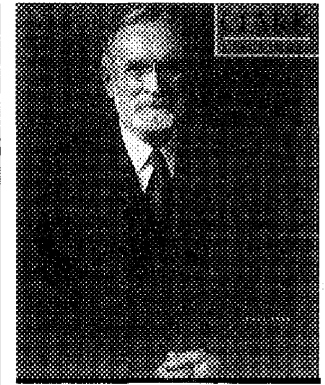
Since graduating from the Law School, Jensen has spent the bulk of his career in government service "I started in the Department of Justice, then moved to the Department of the Interior and then with the EPA," Jensen said "There was a short time when I worked in private practice with Jones, Waldo, Holbrook & McDonough in Salt Lake City."

Jensen's current position gives him responsibility for 2,500 employees throughout the country Specifically, his department is charged with enforcement of environmental regulations under the Clean Water Act and the Safe Drinking Water Act "Our duty is to regulate the dumping of waste products into the nation's waterways and to set standards for the quality of drinking water in the country," he said Jensen was appointed to his present post in 1985 by President Reagan

Over the eleven years since the charter class left the law school, Jensen's career has carried him to 62 cities in 30 states He reflected on some of his experiences in the practice of law "When I first got out, I worked for the Justice Department I found myself working as co-counsel in the only case ever filed by the federal judiciary against the government alleging an unconstitutional reduction of wages due to the inflationary factors in the economy That was the type of action where no attorney could win," he noted, "and I didn't "

Jensen was also involved in a case where a private citizen sued the Federal Bureau of Investigation because it had steamed open the letters she sent to a man she knew in the Soviet Union "That was my first trial," he said While he was with the Interior Department, Jensen worked on land and water claims made by the Indian tribes "Up to that time, I had not been aware that there are 270 semisovereign Indian tribes that effectively have their own judicial systems," he said

Jensen did his undergraduate work at Yale and the University of Utah He noted that he entered the charter class with the "help" of Dean Rex Lee "I attended an informational meeting about the Law School and approached Dean Lee to get more information I introduced myself and Dean Lee turned to President Dallin Oaks and said 'President Oaks, I want you to meet the first member of the charter class ' I guess I was kind of committed to attend the J. Reuben Clark Law School at that point."



Memorandum and Its Photographer and Designer Receive Kudos from CASE

The Council for Advancement and Support of Education (CASE) awarded the Clark Memorandum a silver medal in a recent national competition "The award means *Clark Memorandum* was judged as one of the finest publications of its kind in the nation," said Claude Zobell, editor The magazine competed against 142 other entries and was evaluated on content, editing, writing, design, photography, and use of resources.

CASE also named John Snyder, whose photo is on the cover of this issue, the national photographer of the year Linda Sullivan, art director of the Clark Memorandum, was designated national designer of the year Both the individual awards included a \$1,000 prize.

Law School Team Places Second in National Negotiations Competition

BYU Law School's representatives in the National Negotiations Competition captured second-place laurels in the third annual competition held in New Orleans on February 14. This is the first time BYU has fielded a team in the competition. Duncan Barber from Los Angeles, California, and David Crapo from Idaho Falls, Idaho, both third-year students, earned the right to represent the school in the competition by finishing first in the intraschool competition and by winning the regional competition hosted by BYU in November. Twenty-two teams participated in the school competition.

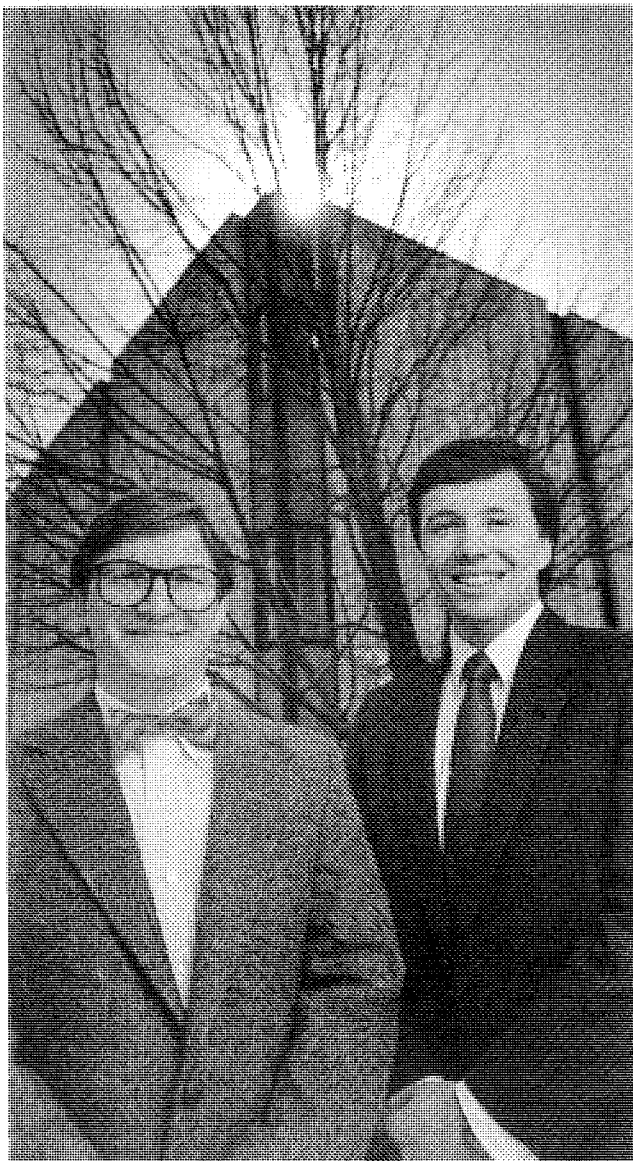
On the regional level Barber and Crapo competed against teams from the University of Denver and Arizona State. As the host school, BYU was able to field two teams in the regional competition. Each of the twelve regions in the country sent one team to the national competition.

Participants in the contest represent a client in a mock negotiations setting against an adverse party. Both sides of the negotiation receive the facts of the dispute about three weeks before the competition. Each team also receives "secret facts," unknown to the other side, that reflect the position of its own client.

Each round of the competition is scored by four judges who are either attorneys, judges, or

arbitrators. The negotiating techniques of the competing teams are judged on a scale of one to seven, four representing the skills of a standard attorney. "The judges are looking for effectiveness of presentation, teamwork, strategy, ethical conduct, and how well the negotiators represent the will of the client," according to Crapo.

The BYU team met the team from George Washington in the first round of the national competition, and Northwestern in the second



*Duncan Barber, left,
David Crapo, right*

round. The winners of the competition were determined by a compilation of total points obtained. Rutgers Law School took first in the competition.

Barber and Crapo will be joining the Holme, Roberts & Owen after graduation. Barber will be in the Denver office. Crapo will work in the Salt Lake office after a clerkship with Judge Monroe McKay of the Tenth Circuit Court of Appeals.

Law School Celebrates "The Blessings of Liberty"

The United States Constitution is effectively a structure of power and a beacon of hope for continued liberty and freedom for all Americans," according to Margaret Bush Wilson, former chairperson of the NAACP Board of Directors.

Wilson was the inaugural speaker in a series of lectures and panel discussions on the Constitution being sponsored by the J. Reuben Clark Law School as part of the bicentennial celebration commemorating the signing of the document. The series has been entitled "The Blessings of Liberty" and included Wilson's address on February 26, followed by a panel discussion composed of federal and state judges on March 5. In addition, the 1987 commencement featured Eugene Thomas, president of the American Bar Association. Lectures in September and October will include legal scholars from throughout the country.

Wilson, a well-respected lawyer and civil rights activist, characterized the Constitution as a structure of power, because it is not a government but has provided the framework through which a government was established. Through this document, the ideals of separation of powers, federalism, and fundamentals of liberty became inherently available to every person.

From a historical perspective, Wilson said the battle for the Constitution

following the Philadelphia convention was won in Massachusetts on February 5, 1788. "Nineteen people voting in the Massachusetts legislature provided the margin of victory by which that state ratified the Constitution," she said.

"Many historians believe that the Constitution would not have been ratified if it had lost in Massachusetts "

By providing an account of her experience with *Shelley v. Kraemer*, 334 U.S. 1 (1948), which is rarely taught in law school classrooms, Wilson illustrated the nature of how the Constitution works as a structure of power.

"That experience taught me that a single person, acting on principles of fairness and justice, can make a difference within the structure established by the Constitution. Moreover, it is incumbent on each of us to use that structure to preserve, for ourselves and our children, the basic freedoms we enjoy."

The next event in the series on the Constitution was held as a counterpart to the 1987 J. Reuben Clark Moot Court finals. Judge Thomas M. Reavley of the United States Circuit Court of Appeals for the Fifth Circuit, Judge Ellsworth Van Graafeiland of the United States Circuit Court of Appeals for the Second Circuit, Judge David Sam of the United States District Court for the District of Utah, and Judge Robert Corcoran of the Arizona Court of Appeals each provided a "Judge's Perspective on the Constitution "

Reavley discussed the nature of constitutional interpretation that has evolved over the last 200 years. "Of course we must

approach the Constitution by looking at the actual text," he said. "But the text must be construed in terms of the context in which the document was drafted in combination with the consensus of public opinion of our modern day. The drafters purposely drafted vague expressions to allow the Constitution to be flexible enough to adapt to the changing needs of our society "

However, beyond the means of interpretation, Reavley suggested that the bicentennial should be a time when Americans look at the Constitution with an eye to discerning how we can make it continue to live and work. "Most people do not understand the hopelessness of the situation from which the Constitution emerged. The deliberations were held in secret because it was not the original purpose of the delegates to draft a new document, but to amend the Articles of Confederation. The situation was so bad that James Madison, in correspondence with Thomas Jefferson, characterized the emergence of the document as 'a miracle.' We must consider how it was that a miracle could come out of Philadelphia and how we can keep the miracle alive," Reavley said.

Van Graafeiland, by assuming the role of a "devil's advocate," hypothesized about subjects that might be topics for discussion if a new constitutional convention were called. "I think there would be discussion about the Equal Rights Amendment. There would possibly be a discussion about abortion and a balanced budget, but I have

concluded that there are other significant topics that might receive the mandate of constitutional authority.

"For example, there might be an amendment that eliminates punitive damage awards to plaintiffs. The purposes of punitive damages are not met through the award of millions of dollars to private persons, and perhaps we would be better served by a strict limit to recovery of compensatory damages "

"In addition, there might be an amendment to disallow the use of 'racial preference' as a remedy for racial discrimination in civil rights areas "

Sam told an inspirational story about how his parents immigrated to the United States because they felt that liberty and freedom were more precious than life itself. "My appreciation for the Constitution does not stem from my legal training or career, but from the values instilled in me by my parents," Sam said. "My parents lived in Transylvania and my father left on foot to try to reach the United States. When he arrived and was able to bring my mother over, he acknowledged that a strength beyond his own helped him accomplish his goals "

The unique character of the Constitution rests in its formulation of three separate and independent branches of government that function through interdependency, according to Sam. "Each branch has its own power, but each relies on the other to the extent necessary to secure liberty and freedom under the Constitution. One must wonder how such a cluster of genius was found in America in the late eighteenth century when a

similar concentration of talent has never been seen again across the skies of American leadership. For myself, the answer lies in the scripture where the Lord said he raised up wise men for the very purpose of establishing the Constitution."

Corcoran emphasized the renaissance of state constitutions. "During the era of the Warren Court, state constitutions atrophied as the federal Constitution became the primary basis for decision in state and federal courts. However, in the Burger/Rehnquist era, state courts have been more willing to use their own state constitutions to determine the fundamental rights of litigants," Corcoran said.

Moreover, some provisions of state constitutions are interpreted more strictly than the federal Constitution. "For example, the Supreme Court of Oregon interpreted its provision regarding obscenity more strictly than it would have been under the federal Constitution. This divergence between interpretation of state and federal constitutions is becoming more pronounced in several areas, and lawyers should consciously become more familiar with the provisions of their state constitutions. Too many lawyers have been ignorant of the usefulness of their state constitutions and to an extent have been guilty of malpractice " Corcoran said.

He concluded by suggesting that the occasion of the bicentennial is a good time to discover the rights secured for all Americans under the auspices of each state's constitution as well as to celebrate the signing of the federal Constitution.



Moot Court Team Captures Title

Continuing the winning tradition established by the Moot Court Program at BYU Law School, Kristin Smyth and Tamar Jergensen, both second-year students, and Richard Bevan, a third-year student, captured top honors at the Seventeenth Annual William B. Spong, Jr., Invitational Moot Court Competition, sponsored by William and Mary Law School in Williamsburg.

Invitations to participate in the competition are based on the demonstrated strength of a law school's moot court program. Schools that fail to perform well in the competition over two years are no longer invited, according to Jergensen. Twelve teams faced off in

this year's meet. Schools participating, in addition to BYU, included Maine, Cardozo in New York City, Brooklyn, New York Law School, Arkansas, Southwestern, Villanova, University of Richmond, George Mason, Cleveland-Marshall, and the University of Virginia.

The problem argued this year involved issues under the First and Fourteenth Amendments to the Constitution. Participating teams argued for or against the constitutional protection of the private possession of child pornography.

To reach its first place finish, BYU's team participated in five arguments: two preliminary rounds, a quarterfinal, a semifinal, and the final round against the team from the University of Virginia Law School.

Richard Bevan, Kristin Smyth, and Tamar Jergensen (left to right).

Membership on the Board of Advocates, BYU's moot court program is based on several factors. Students whose first-year grades place them in the top 20 percent of the class receive an invitation to join the program. The board also conducts a write-in competition and extends invitations to the winners of the first-year moot court competition.

Smyth, from Sacramento, California, is clerking in Washington, D.C., this summer, as is Jergensen, a University of Utah graduate from Salt Lake City. Bevan returned to his hometown of Twin Falls, Idaho, after graduation to practice with the Nelson & Rosholt firm.

Law School Inaugurates New Law Journal

The Law School recently published the first edition of the *BYU Journal of Public Law*, a scholarly work prepared by participants in the Legal Studies Cocurricular Program.

In periodical format, the new *BYU Journal of Public Law* will include the work of both student and non-student authors and will focus on the legal relationship of citizens to their governments. "The rapidly expanding activities of various governmental units and the complexities of modern life raise new questions about the proper role and organization of government, the responsibilities of public officers,

and relations of governments with one another. The new periodical will provide a forum for scholarly opinion and analysis of these issues," according to Steven L. West, editor of the journal.

The new *Journal of Public Law* will replace the *Summary of Utah Law* series as the project produced by Legal Studies members. The first volume of the Utah law summary series, *Summary of Utah Real Property Law*, was published in the spring of 1978. Since that time the journal has published seven other volumes, each dealing with a previously unsummarized area of state law. These volumes provided needed assistance to the practicing bench and bar in Utah by bringing together, in single volumes, previously scattered segments of Utah statutes and case law. The summaries have been immensely helpful to lawyers and nonlawyers and are the only works of their kind in the state.

The first volume provided summaries of recent developments in Utah law, including articles on the Utah Consumer Credit Code, interstate banking, Utah governmental immunity, and water rights. Other articles in the edition discussed scientific evidence in paternity cases, regulation of alcoholic-beverage retail outlets, the insanity defense in Utah, drunk-driving statutes, equitable remedies under RICO, punitive damages, and criminal antitrust actions.

Although the first issue discussed Utah law only, subsequent issues will focus on the dynamics of national and international public law.

Professor Hawkins Heads Florida Tort and Liability Insurance Study

Professor Carl S. Hawkins, former dean of the J. Reuben Clark Law School, is leading a group of scholars who are conducting a study of tort law and its relationship to the "liability insurance crisis" for the state of Florida.

Hawkins was named executive director of the Academic Task Force for Review of Insurance and Tort Systems. "The task force was commissioned by Florida's legislature to conduct a comprehensive study of tort law and the insurance system. We hope we can develop possible solutions to problems involving insurance costs, insurance regulation, and the impact of tort law on the insurance business," Hawkins said.

The task force was formed as part of a series of actions taken by the Florida legislature during the 1986 session. Florida legislators, like lawmakers throughout the country, were bombarded with heavy lobbying pressure by the business community. They wanted changes in the tort system or the insurance business to relieve financial burdens created by insurance price hikes. Insurance rates have increased as much as 500 percent for some businesses, and in others, liability insurance is not available.

In response to the pressure, Florida passed several measures during the 1986 legislative session in addition to creating the task force. First, they provided

for better insurance regulation by requiring that insurance companies file reports with the Florida Insurance Commission, detailing results of every claim that is closed or settled. In addition, they empowered the commission with the ability to regulate commercial liability insurance prices.

Second, they made changes in the state's tort law by limiting damages for pain and suffering to a maximum of \$450,000. The legislature also modified their joint and several liability statutes so that defendants, if found liable, will only be liable for damages in proportion to their responsibility for the harm.

"These changes are similar to actions taken by many states over the last two years," Hawkins said. "But Florida went a step further by appropriating \$875,000 for an academic study of their tort and insurance systems. Though other states have conducted ad hoc studies about the problem, this is the first major effort to look at the relationships between tort law and the insurance system."

The task force is composed of the presidents of the University of Florida, Florida State University, the University of Miami, and two other people from the state. As executive director, Hawkins works with a paid staff of law professors, economics professors, and insurance experts from various Florida universities and the Florida community.

The study is scheduled to last until March 1, 1988, when final report must be given to the Florida legislature. An interim

report was presented May 1, 1987.

"Our task is not an easy one. Florida wants to develop a system in which liability insurance is both affordable and available for everyone. However, to develop helpful conclusions and recommendations, complex and difficult questions must be addressed," Hawkins said.

Tort law and its relationship to the cost of liability insurance is an important issue the task force will address. Hawkins noted there are many theories of why the "liability crisis" has developed. Insurance companies blame an overly litigious society and bar, in addition to overly generous juries, for their financial difficulties. However, lawyers and others point to mismanagement and poor judgment by the insurance companies as the reasons for the increases.

People who espouse this argument suggest that the price increases of the recent past have been the result of insurance companies attempting to make up for lost income due to a drop in investment income. "Some people say that when interest rates were high in the late 1970s and early 1980s, insurance companies did not increase their rates significantly because they were able to earn substantial profits on investment income. However, when interest rates fell, they lost that income and have increased rates significantly to mitigate their losses," Hawkins said.

An additional factor that will affect the study is the overriding economic forces affecting the insurance industry. Problems in the reinsurance market have

eliminated the availability of insurance for some kinds of risks. "For example, many day-care centers cannot get liability insurance because of the difficulty insurance companies have predicting their risks," Hawkins said.

In addition to looking at the relationship between tort law and insurance prices, the task force will also look at proposals for solving the problem. Though he admits he has not drawn any final conclusions, Hawkins said he expects that the most viable form of insurance will be commercial. "The key is to provide a market condition that will allow insurance companies to develop stable and predictable measures of their potential liabilities. Insurance providers argue that they have not been able to predict because of unusually high jury awards and an inordinate increase in litigation.

"Consequently, we will study the increase, if any, in litigation in Florida, whether there has been an increase in jury and judge damage awards, and whether these factors have any bearing in the cost of liability insurance."

Hawkins said he anticipates that the impact of the study on tort law reform or changes in the insurance system will depend on the political climate when their final report is released. "However, we also expect the study to make a serious contribution to the available literature in the field."

While he works on the study, Hawkins will work from his office at BYU during the fall semesters and will work in Florida during each winter semester.



Jean W. Burns Named Associate Professor of Law

Professor Jean W. Burns has been appointed as an associate professor of law at the J. Reuben Clark Law School, according to Dean Bruce Hafen.

"Jean Burns is smart, highly professional, and has a fun sense of humor. She is also a strong and caring classroom teacher. We're fortunate to have her join us."

Burns came to the Law School in August 1986 after spending several years in private practice for the firm of Dechert, Price and Rhoads in Philadelphia, Pa. She was a commercial litigator and now teaches commercial law and conflicts. She is also serving as a member of the faculty committee on admissions.

"I have been very happy in my position here," she said. "It has been a stimulating experience to prepare for class, work with

students, and enjoy the camaraderie with my colleagues. I have also noticed that the students here are intelligent, hard-working, and seem to be friendlier than the students I know at other law schools."

As a litigator, Burns said she had many challenging and interesting experiences. "Commercial law is fun because I get to meet so many different types of clients. For example, one case would allow me to learn everything there is to know about Toyotas, while another case would allow me to become familiar with hotel design and management, and other cases exposed me to a broad range of business practices."

On the other hand, Burns noted that there is a negative side to a practice like hers. She said clients generally do not understand the legal system, and they seem to expect immediate results. Thus, they tend to be concerned about how long their claim will take. "But the worst part of dealing

with a client is when they find that they usually must pay attorney's fees even if they've won," she said.

The primary distinction Burns has found in switching from practice to teaching is the different perspective of the law. "In practice, I found that I worked reactively. As clients approached me with problems, it became a process of efficiently finding the best answer to their specific problem. As a teacher, however, I can look at the law proactively and try to determine where the law has been, and more importantly, where it should be going. Moreover, I am learning along with my students. I once thought I knew Article Nine of the Uniform Commercial Code perfectly, but as I prepare to teach, I am still able to see new little nuances I had not noticed before."

Burns' hometown is St. Louis, Missouri. She received her B.A. from Vanderbilt University in 1970 and her J.D. from the University of Chicago Law School. She was associate editor of the *University of Chicago Law Review* and a member of the Order of the Coif. After she graduated from law school, Burns spent two years working as a law clerk for Judge Wilber F. Pell, Jr., U.S. Court of Appeals for the Seventh Circuit.

Burns said she decided to move to the West because her husband, who is a physician, had a job opportunity at the University of Utah College of Medicine and because they have vacationed in the West for years and "loved it." However, she does miss having a major league baseball team around to cheer for.

Computers and Practice: BYU Professors Develop "CAPS"

While many lawyers are incorporating modern computer technologies into their practices, professors at the J. Reuben Clark Law School have developed a computer system that represents a "quantum leap" in computerized production of legal documents.

Professors Larry C. Farmer and Stanley D. Neeleman have worked together for the last twelve years to develop a highly sophisticated "Computer-assisted Practice System" (CAPS), which is capable of analyzing facts and developing accurate legal documents. "The project started when we discussed ways of using computers to improve the practice of law," Neeleman said. "We investigated existing software and consulted law firms interested in law practice systematization. Initially, we worked with a word processor in concert with a list-processing system to automate the preparation of wills."

However, the project moved past the word-processing stage when Marshall R. Morrise, a computer scientist, was hired to help develop special software, which has evolved into the current CAPS system. The program has been financed by the Law School and in part by West Publishing Company. With added financial resources the CAPS project expanded to develop software tools that could be used in many

areas of legal practice.

The result of the work of Farmer, Morrise, and Neeleman is a set of software that makes it possible for attorneys and other legal professionals to efficiently create sophisticated documents such as wills, estate plans, pleadings, etc.

"CAPS is designed to allow an 'expert' in a particular area of practice to develop a substantive set of instructions about how to complete a legal task and draft the language to be used in the document. This substantive data forms the 'practice system data base' which provides a basis for the interactive nature of the CAPS system," Neeleman said. "For example, if a lawyer needs to do an estate plan, he will need to gather the basic information from the client. Then, when he engages the CAPS system, it will ask him to input data gathered from the client. Depending on the way each question is answered, the CAPS program then analyzes the data and formulates a custom document for that client."

Though CAPS may be used for any type of practice involving the production of standard documents, the prototype currently being tested is in estate planning. Neeleman noted that as a CAPS user enters data into the system, it can be an educational tool as well. "We have created a footnote system designed to answer questions of the user. If, for example, a user does not know why the computer is asking a particular question, he can refer to the footnote to see why the expert that created the substantive elements felt the information is important. Moreover, the system can be updated to

reflect current case law and other developments," he said.

Morrise explained that the system is similar to the volumes of ring binders lawyers have used containing checklists, work sheets, example documents, and other materials. Usually the binders are divided into sections and elements so that the user can reference them. "CAPS is similar because the program is designed to categorize the elements necessary for the successful completion of a legal project. These elements can include text, practice logic, and other data that identify and track the steps to be taken in handling a matter, facts, and decisions, analyzing and advising on issues that should be considered in the disposition of a matter; and generating documents," he said.

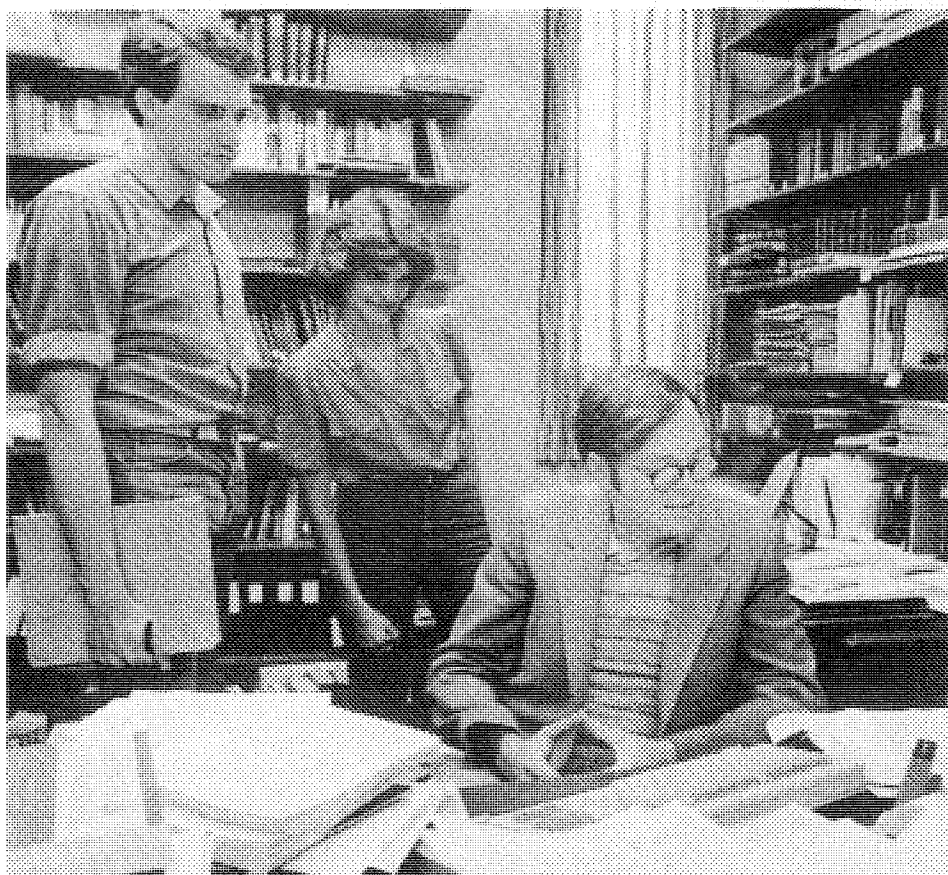
The system prototype has been tested in a few locations and is currently being used in the Salt Lake City and Denver offices of Holme, Roberts & Owen Neeleman, who is also the managing partner of their Salt Lake City office, said they have found that CAPS has allowed them to reduce the amount of time required for the production of certain documents by 80 percent.

As a result of the efforts of professors Gerry Williams and Larry Farmer, Harvard's legal clinic is now using CAPS.

The Provo office of Legal Services, Inc., has also been a test site for CAPS. The lawyers there have been successful in rapidly creating numerous documents that are relevant to domestic relations (adoption papers, divorce documents, etc.)

Morrise said the development of CAPS is now at a stage where it may enter commercial production. However, there are some problems the CAPS developers are encountering in the production of the system. First, the system software is currently designed to work with VAX-Digital computer systems. "We are working to establish a means to convert the program so that it will be compatible on personal computers, but that has not happened yet," he said. Second, though people in the legal community who are aware of the system have been enthusiastic about its possibilities, there is a group of lawyers who resist change and think that if they do not do the work themselves, it is not done right. Finally, the successful use of CAPS in a law firm requires a strong commitment by firm management to devote the resources necessary to develop the substantive elements of the system. "This problem may be resolved through the development of systems for each jurisdiction to reflect the current law and thinking from state to state."

Neeleman feels that CAPS is particularly suited to providing legal services to people who need but typically do not seek legal assistance. "CAPS can allow the creation of expert documents at a fraction of what it typically costs most firms today. Therefore, it is possible for a lawyer to provide services to people who otherwise cannot afford legal services. We hope CAPS will be used to fill this gap that has developed in the delivery of legal services to the public," he said.



Faculty Notes

W. Cole Durham

One of Professor Cole Durham's main interests is in comparative law, which has also been the emphasis of his research during 1986. His first paper of that year reflected this effort: "Comparative Perspectives on Church-State Issues: The Federal Republic of Germany and the USA," which he presented while at the Conference on Comparative Constitutional Law at the University of Notre Dame in April.

Durham followed that conference with two papers written in the German language. He presented these papers at Frankfurt University in June and Bielefeld and Augsburg universities in June and July. They were titled

"Tötungsdelikte in amerikanischem Recht" (Homicide Rules in American Law) and "Neuere Entwicklungen in Auslegungstheorien in amerikanischem Verfassungsrecht" (New Developments in Theory of Interpretation in American Constitutional Law).

Comparative law then led Durham down under to the Congress of the International Academy of Comparative Law at Sydney, Australia, where he presented "The Aboriginal and Comparative Law: A United States Perspective."

Back home, Durham has spearheaded the organization of the *International and Comparative Law Annual*. He has also been serving as vice-president of the Harvard Alumni Association of Utah.

Larry C. Farmer

Professor Farmer made a presentation emphasizing computer use in the practice of law in three different conferences during 1985-86.

He presented "Computer-assisted Law Practice Systems" at the Conference on Legal Expert Systems at Houston in June 1985. Farmer also presented the same at the Legal Tech Conference, sponsored by Price Waterhouse, and the Section of Law and Computers of the American Association of Law Schools.

Farmer was on leave during the 1986-87 academic year as a visiting professor at Harvard. His duties included teaching, interviewing and counseling, and assisting in integrating the CAPS project into the Harvard operation.

J. Clifton Fleming, Jr.

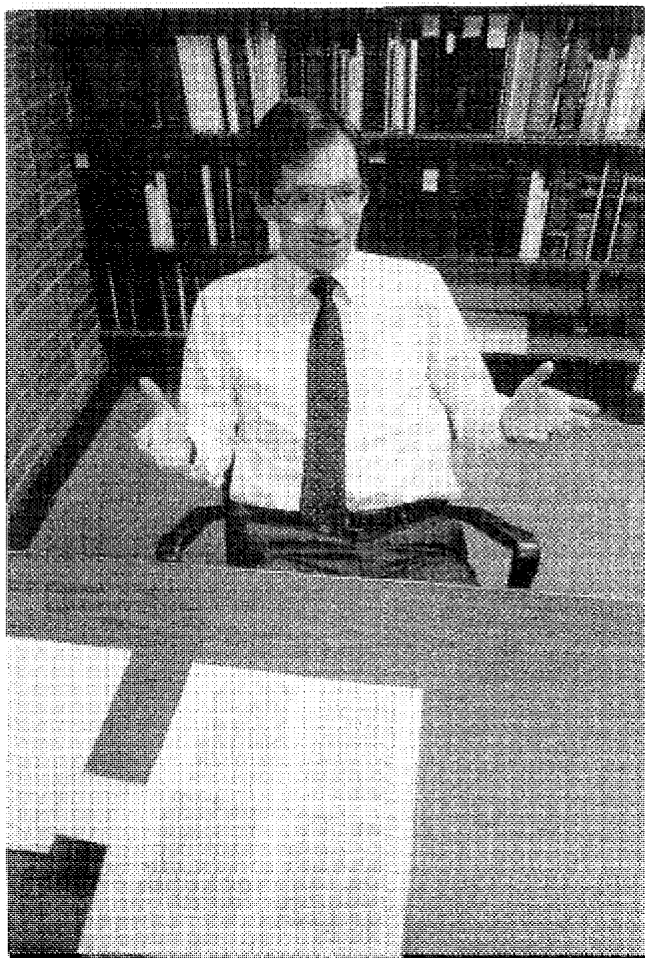
Fleming has been serving as associate dean of the law school since returning from a year's service as professor-in-residence of the Internal Revenue Service's Chief Counsel Office. His duties as associate dean have included coordination of faculty recruitment and curriculum, and planning the annual meeting of the Board of Visitors.

He has written a chapter entitled "Survival of Major Corporate Tax Attributes" in *Tax Aspects of Buying and Selling Corporate Businesses* and has written 1984 and 1985 supplements to *Tax Aspects of Buying and Selling Corporate Businesses*.

Fleming published the article "Announcement 86-65," which appeared in the *Internal Revenue Bulletin* and was reprinted in *BNA Daily Tax Report* and the *Standard Federal Tax Reporter*.

During his year in the Office of the Chief Counsel of the IRS, Fleming took occasion to publish his observations. He presented a paper at the Washington, D.C., Tax Study Group on "Current Developments in the Office of the Chief Counsel" and presented another titled "Current Legislative Developments" at the IRS Southwest Region CLE.

Other activities have included the lecture "Popular Myths about Taxes and Tax Collection" given to the Women's Legislative Council of Utah County. Fleming also provided comments to the IRS on proposed Section 338 Regulations, which are summarized in 28 Tax Notes 510 (1985).



Michael Goldsmith

Having recently joined the J Reuben Clark Law School faculty as associate professor, Goldsmith has been teaching courses in evidence, criminal procedure, and RICO. His research and writing have followed the same vein. Two of Goldsmith's essays were published in the *New York Times*: one on RICO reform and the other on the constitutionality of testing professional athletes for drug abuse, which was reprinted in the previous edition of the *Clark Memorandum*.

BYU Law Review published one of Goldsmith's articles of the past year: "Civil RICO Abuse: The Allegations in Context."

Goldsmith has presented several papers to different conventions and law enforcement and judicial departments of various states, including "Problems Attorneys Experience in Attempting to Use Newly Developed Scientific Evidence at Trial," "Role of the Expert Witness," "The Use of Electronic Surveillance," and "Civil Uses of the RICO Statute." His work has also included the "Utah State Commentator" for the ABA-ALI RICO Symposium and "Evidence Summary" for the Minnesota Bar Review.

One of Goldsmith's articles, "Civil RICO Reform: The Basis for Compromise," was published in the *Minnesota Law Review*.

James D. Gordon III

Gordon is also a recent addition to the faculty and has been teaching the first-year contracts course and securities. Another of his assignments has been teaching and coordinating the first-year legal writing program.

Gordon has authored two articles now at press: "Flying into Blue Sky: Are Aircraft Leasebacks Securities?" and "Injunctions Against Initiative Elections," which was coauthored by Professor David Magleby of the Brigham Young University Political Science Department.

Noted for his humorous delivery, Gordon has given two lectures on securities issues at Brigham Young University's School of Management and another lecture on legal research at a conference for paralegals recently held at the Law School. In addition, Gordon has also performed pro bono work for the Foundation for Ancient Research and Mormon Studies (FARMS).

Bruce C. Hafen

Dean Hafen's 1986 book review essay on child advocacy was published in the *Harvard Law Review*, his 1983 article on constitutional privacy in the *Michigan Law Review* has since been cited by the Supreme Court; and an article on the institutional rights of public schools will appear soon in the *Ohio State Law Journal*. He has recently published articles on education and family life in the *Journal of Social, Political and Economic Studies* and *This World: A Journal of Religion and Public Life*. His papers on parental rights in education

and on obscenity were recently published in *Vital Speeches*.

Hafen also wrote a chapter, "Privacy in the Family and the Home," for Mathew-Bender's new multivolume treatise on *Privacy—Law and Practice* (1987). Other chapters are forthcoming in books published by *Marriage and Family Review*, the Center for Religion and Society in New York City, and BYU Scholarly Publications. The BYU books contain papers delivered at conferences on *Government Regulation and the Constitution* and *Higher Education and Social Morality*.

Concluding his term as president of the American Association of Presidents of Independent Colleges and Universities, Hafen testified several times before House and Senate committees and the U.S. Commission on Civil Rights on currently proposed legislation dealing with civil rights in higher education. He also delivered a paper, "Are Private Colleges Still Private?" to the National Association of College and University Attorneys.

Hafen was recently a federal-grant reviewer for the Office of Adolescent Pregnancy of the U.S. Department of Health and Human Services and was invited to present a paper on children's rights at Harvard Law School's 1986 Conference, "Who Speaks for the Child?" He also presented a paper entitled "Testing the Assumptions of Legal Policies for Adolescents" at BYU's 1986 Family Law Symposium and a paper to the Utah Education Law Seminar, "American Education since *Brown* and

Berkeley: The Risks of Too Much Law ”

Blending professional and religious perspectives, Dean Hafen delivered the third annual Harman Lecture at BYU in 1986, “The Waning of Belonging,” and published a collection of essays on faith, *The Believing Heart*.

Eugene B. Jacobs

For the past two years, Professor Jacobs has been a consultant to the Utah Constitutional Revision Commission. He reports the commission is about two-thirds through a complete revision of the constitution, and the education section and judicial article, two of the major projects, have been completed. Jacobs’ specific assignment is with the local-government section.

Jacobs has also been serving for two years on a Utah State Bar committee and subcommittee dealing with post-law-school training. In particular, the questions are being asked about whether there should be an internship- or apprenticeship-type period required of graduates to help them adjust from casebooks to the practice of law.

As faculty advisor to the Law School’s Government and Politics Society, Jacobs also helped plan the society’s annual conference held in March.

Rex E. Lee

Professor Lee returned to teaching at the Law School in 1985 after his hiatus as solicitor general of the United States. His research and publications draw on this experience. He wrote

“Lawyering in the Supreme Court: The Role of the Solicitor General” for the yearbook of the Supreme Court Historical Society. Other articles include “Legislative and Judicial Questions,” published in *Harvard Journal of Law and Public Policy*, and “The Supreme Court’s 1983 Term: Individual Rights, Freedom, and the Statute of Liberty,” published in the *Georgia Law Review*.

Lee has also been serving as the chairman of the Law School’s clerkship committee.

Other articles by Lee are “The American Courts as Public Goods: Who Should Pay the Costs of Litigation?” published in *Catholic University Law Review*; “Politics, Polemics and Principle,” in the *Ohio Law Journal*; and a book review, published in the *Michigan Law Review*, of Pfeffer’s *Religion, State and the Burger Court*.

Lee also gave an address at the dedication of St. Mary’s Law School Library, which is reprinted in the *St. Mary’s Law Journal*.

Constance K. Lundberg

Professor Lundberg has contributed much of her time to government-agency and community service. She has been a member and vice-chair for regulations of the Utah Board of Oil, Gas, and Mining. She also gave a presentation on legal requirements for public participation in land management and planning to Region IV of the United States Forest Service.

Lundberg has been a member of the Board of Friends and Alumni of Utah Technical College at Provo/Orem, a member of the

Board of Advisors for the Paralegal Program at Utah Technical College, and a member and secretary of the Alumni Association Board of the University of Utah College of Law.

Her work in natural resources has led to contributions in two publications: “Rights of Access over Special Category Lands” in *Rights of Access and Surface Use*, and “Surface Management Requirements and Special Stipulations” in *Law of Federal Oil and Gas Leases*.

Lundberg also has written two volumes of *Mineral Acquisition and Disposition of the Federal Public Domain*, coauthored by Michael Braunstein, which should be forthcoming.

Stanley D. Neeleman

The continual demand for current information in taxes and estate planning has kept Professor Neeleman busy preparing five papers for continuing legal-education programs. They are “The Use of Trusts in Estate Planning,” “The Partnership Capital Freeze,” “Marital Deduction Planning,” “Innovations in the Use of Trusts,” and “Techniques for Shifting Income.”

The *Colorado Estate Planning Desk Book* also includes a chapter on the use of trusts in estate planning that was written by Neeleman.

Outside continuing legal education, Neeleman presented four papers to workshops and seminars around the country, which included “Tax Planning for the Owners of Oil and Gas Interests,” “Advanced Marital Deduction Planning,” “Partnership Allocations,” and “Update of Partnership Taxation.”



James E. Sabine

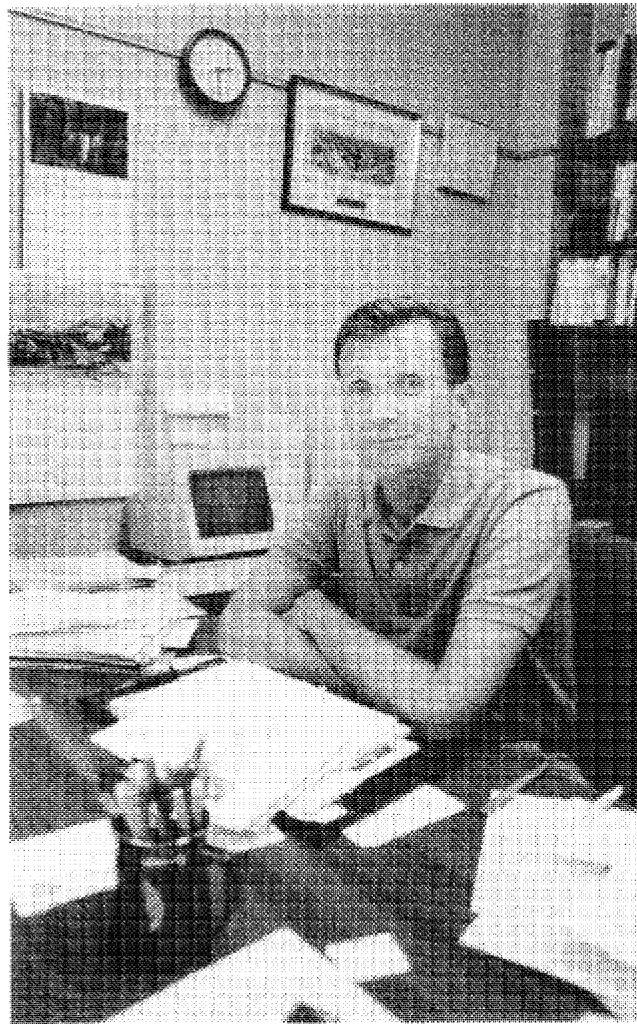
In addition to his continued interests in community property law and state and local taxation, Professor Sabine has been serving as the Law School's liaison with the American Inns of Court I. The Inn was begun a few years ago at the suggestion of Chief Justice Warren Burger. It is designed to unite a cross section of the bar into a forum for the promotion of excellence in legal advocacy, to promote a camaraderie of the bar, the bench, and the students of the law, and to contribute to essential reforms and improvements in the training and performance of legal advocates. Under Professor Sabine's guiding hand, the Inn has made substantial progress toward achieving these goals.

Richard G. Wilkins

A newer member of the faculty, Wilkins spent much of 1985-86 developing course materials for the first-year civil-procedure class. The law students also selected him as first-year-course Professor of the Year for 1986-87.

One of his works, which is currently at press, was a monograph on abortions initially prepared in May 1985. Wilkins, however, is currently rewriting it for inclusion in an anthology edited by the Association for the Advancement of Science and published by West Publishing.

Wilkins has also written an article that will be published in the October issue of *Vanderbilt Law Review*. The title is "Defining the 'Reasonable Expectation of Privacy': An Emerging Tripartite Analysis."

**Gerald R. Williams**

Professor Williams recently returned from a stay at Harvard Law School, where for one semester he worked as a visiting scholar and for the following semester he served as a visiting professor, teaching a negotiations course.

Being at the forefront of negotiations research, Williams presents his knowledge and research to seminars and conferences about twice a month. Among his topics are "Patterns of Aggression and Cooperation in Legal Negotiation," "The Strengths and Limitations of Negotiation as a Method of Dispute Resolution," "The Dynamics of Lawyer-to-Lawyer Negotiation," and

"Cooperative Solutions to Aggressive Negotiating Behavior." Two presentations were made in Brazil to the Ministry of Foreign Affairs and the University of Sao Paulo.

Williams has also put his knowledge of negotiation into two articles: "Blessed Are the Peacemakers: A Lawyer Looks at Negotiation," published in *BYU Today*, and "Using Simulation Exercises for Negotiation and Other Dispute Resolution Courses," published in the *Journal of Legal Education*.

Mary Anne Q. Wood

Professor Wood stepped down from her position as associate dean last year and

since has been on leave from the Law School.

Her recent publications include a chapter in the book *Human Life and Health Care Ethics* titled "The Legal Implications of Medical Procedures Affecting the Unborn." The book is published by University Publications of America.

Wood also presented the paper "Medical Screening" (with Stephen Wood and J Jarvis) at BIO-85: Decisions on the Engineering of Human Life, held at Pullman, Washington.

Stephen G. Wood

Government service has been prominent in Wood's career recently as he has served as a reporter for the Utah Administrative Law Advisory Committee for the past two years and a member of the Federal Research Committee for the past year.

One of Wood's recent articles (coauthored with J.R. Kearl and T. Maynes) is titled "Economics and Antitrust Litigation" and was published in the *American Journal of Comparative Law*. He also submitted a preliminary report analyzing administrative enforcement mechanisms in legislation administered by the U.S. Department of Labor.

Wood has submitted three papers to various conferences and professional meetings. "An American Perspective on Electronic Funds Transfers" was presented at the University of Sydney Law School in Australia, and "The Use of Economic Evidence in Antitrust Litigation" was presented to a congress of the International Academy of Comparative Law held in Melbourne, Australia.

Class Notes

Michael L. Allen '81

After completing Law School, Michael clerked for Judge Lloyd D. George in the U S. Bankruptcy Court in Nevada until 1984. He is now living in Bountiful, Utah, and works for Suitter, Axland, Armstrong & Hanson of Salt Lake City. The firm handles creditors' rights in bankruptcy, commercial law, and real estate.

Wilford W. Andersen '76

Wilford Andersen has been working for Andersen Investments since 1979 in real estate development. He is involved in the Mesa Rotary Club and the Mesa YMCA Board of Directors and is acting as the Mesa Easter Pageant general chairman. Since 1986 he has been the Mesa Eighth Ward bishop. The J. Reuben Clark Law Society has benefited from his service as founding chairman from 1984 to 1986, and he is now a member of the Law School Board of Visitors.

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Memorandum, 338 JRCB,

Provo, Utah 84602



Charlene Barlow '81

Charlene Barlow accepted a position after graduation with McCullough, Jones & Barlow. After a year in private practice, she spent a year in the Orem City Attorney's Office. During 1984-85 she worked with Provo City. Charlene is now occupied in criminal prosecution with the Utah County Attorney's Office.

Bruce Barton '76

Bruce Barton was the city attorney in Layton, Utah, from 1975 to 1985 and is now Layton's city manager. He served as president of the Layton Kiwanis Club in 1981 and as president of the Davis County United Way in 1985. In 1985 he published "Bruce Barton's Scripture Kit," and he is currently teaching his ward's gospel doctrine class.

Thomas E. Barzee, Jr. '76

Thomas Barzee is working with the North Kansas City, Missouri, firm of Williams & Barzee. He is involved mainly with general civil practice and recently acted as plaintiff's counsel in the cases involving the collapse of the sky walks at the Hyatt Regency Hotel in Kansas City. From 1977 to 1980 he was an instructor at

Rickhurst College and a lecturer at the University of Missouri at Kansas City Law School. He has been keeping busy as a manager in Little League baseball since 1983. In the Church Thomas is serving as ward mission leader.

Stephen L. Berry '81

Stephen Berry accepted a position with the U S Army and stayed with them from 1982 to 1985. He is now working with Paul, Hastings, Janofsky & Walker of Los Angeles. Stephen was the defending trial attorney for the U S Army in a federal court race-discrimination class action brought by NAACP. The court refused to grant class certification, and judgment was rendered for the Army with \$50,000 sanctions against the plaintiffs. Stephen is serving as the district commissioner for the Boy Scouts. His Church activities have included ward clerk, Young Men president and priests quorum advisor, and elders quorum president. He is now first counselor in his stake's Young Men presidency.

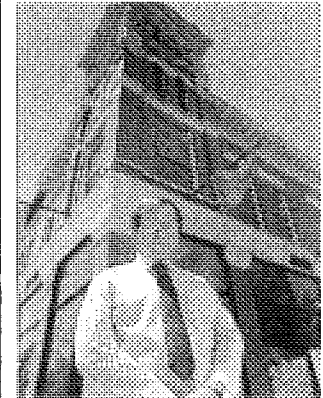
Robert L. Bolick '81

Robert Bolick spent three years with Holdsworth & Swenson of Salt Lake City and a year and a half with Snow, Christensen & Martineau, also of Salt Lake City. The bright lights of Las Vegas lured him away, and he is now with Jeffrey L. Burr, Ltd., working in tax, business, and estate planning. Robert says the highlight thus far in practice consists of a paycheck two times a month. He has served as deacons quorum advisor, in two elders

quorum presidencies, as chairman of his ward activities committee, and as a stake missionary.

Robert W. Brown '81

Robert Brown has been working in insurance defense and general practice with Lonabaugh & Riggs of Sheridan, Wyoming, since graduation and has been a member of the Sheridan City Planning Commission since 1984. He has served in the Church as a stake mission president and is currently the second counselor in his bishopric.



Craig M. Call '76

Craig Call has been employed since 1972 with his own private business in Provo. One of his many accomplishments includes rehabilitating Provo Town Square. Craig served on the Provo City Council from 1981 to 1982 and in the Utah Legislature from 1984 to the present. He has been a bishop, high councilor, and Young Men president.

Layne M. Campbell '81

Layne Campbell accepted a position with Gibson, Dunn & Crutcher upon graduation. He and his wife Marilyn, along with their two sons, Michael and Jeffrey, reside in Irvine, California. Layne has represented the

University of Riyadh, Saudi Arabia, and was recently on the seminar panel of the Orange County Bar Association. He has served as assistant Scoutmaster and deacons quorum advisor and currently is serving in the elders quorum presidency. The Campbell family received the Orange County Board of Supervisors "National Family Week" honor for 1985.

David J. Cannon '81

David Cannon has served as attorney advisor to the chairman of the Federal Trade Commission, as an associate with Shearman & Sterling of New York, and as a law clerk for Judge Weis of the U. S. Court of Appeals for the Third Circuit. After completion of his legal education, he earned a master of public administration degree from the Kennedy School of Government at Harvard. While at Harvard he was on the Soviet Jewry Committee (headed by Alan Dershowitz) and was cofounder of the Human Defense League—the first antiabortion group at Harvard. In 1984 the *UCC Law Journal* published David's article on letters of credit. David is now the senior policy analyst in the White House Office of Policy Development. In the Church he has served as an assistant stake clerk and a gospel doctrine teacher.

Thomas C. Corless '81

Thomas Corless accepted a position with Breidenbach, Swainston, Crispo & Way of Los Angeles upon graduation from Law School and now specializes in tort and business litigation. He is serving on his stake's high council.

Doug Credille '81

During 1981–82 Doug Credille worked with the United States Department of the Interior Board of Land Appeals in Washington, D. C. After his stint with the government, Doug returned to Salt Lake City and worked for the Clyde & Pratt firm for a year. He is now with the Utah Attorney General's office, specializing in natural resources law. Doug prepared two petitions for certiorari to the U.S. Supreme Court and was substantially involved with the legal difficulties in breaching the causeway in the Great Salt Lake and with the West Desert Pumping Project. He has served as a Volunteer Guardian Ad Litem and as a member of the Community Services Committee of the Utah State Bar. His Church service has included service in an elders quorum presidency and as Sunday School president.

Dean Dalling '81

Dean Dalling began working for Smith, Hancock, Moss & Dalling upon graduation and remained there for five years. He is now employed with St. Clair, Hiller, Wood, McGrath, St. Clair & Baker in Idaho Falls, Idaho. Dean served as the Madison County deputy prosecutor from 1981 to 1985 then as the Madison County prosecutor. From 1981 to 1986 he also served as assistant Rexburg city attorney. Dean is now a counselor in a Ricks College bishopric.

David K. Detton '76

From 1976 to 1977 David Detton served with the Honorable David T. Lewis, former chief judge of the United States Court of Appeals for the Tenth Circuit. He then went with

VanCott, Bagley, Cornwall & McCarthy until 1981, when he signed on with Holme, Roberts & Owen of Salt Lake City. Highlights of his career thus far include being speaker and coauthor of "Execution, Acknowledgment, and Recordation of Documents," Rocky Mountain Mineral Law Institute (1986); author of "Fees and Rentals," Law of Federal Oil and Gas Leases, Rocky Mountain Mineral Law Foundation (1985), speaker in "Federal Inshore Oil and Gas Leasing and Operations," ABA Annual Workshop (1983–86), and part-time faculty, Oil and Gas Law, BYU Law School (1979–86). David has been an elders quorum president, counselor in a bishopric, member of a stake high council, stake Sunday School president, and assistant high priests group leader.

William R. Devine '81

Since graduation William Devine has worked for two law firms and the U.S. Department of the Interior. He is now with the Stockman Law Corporation in Sacramento, California, and practices real estate, land use, and environmental law. William was awarded an MBA degree in 1986 from the National University. He has represented the State of Wyoming in litigation involving the Big Horn River System and the United States in the Kesterson Reservoir/Agricultural Pollution Case and in Indian rights and fishing rights cases in the Pacific Northwest. In the Church he has worked with the Scouts and has been a teachers quorum advisor, deacons quorum advisor,

Young Men presidency member, first counselor in the elders quorum, and executive secretary to his bishop.

Brent D. Ellsworth '81

Brent Ellsworth accepted a position with Snell & Wilmer of Phoenix, where he remained until April 1985. He is now with Jackson, Ellsworth & White of Mesa, Arizona, where he specializes in estate planning and probate, corporate, and real estate law. Brent is on the board of directors for the Mesa Senior Centers, Inc. He has served both as an elders quorum counselor and president.

Reid H. Everett '81

Reid Everett is currently with Baker, Manock & Jensen in Fresno, California. He specializes in banking and bankruptcy. Reid has been a council commissioner for the Sequoia Council, Boy Scouts of America and a member of the Fresno California West Stake high council. He is currently the Young Men president for the Fresno Ninth Ward.

Phillip S. Ferguson '81

Phillip S. Ferguson became a partner in the Salt Lake City firm Christensen, Jensen & Powell in January 1986. His practice in substantial product liability cases has provided opportunities for travel and learning about a variety of businesses and manufacturing processes. Phillip has been an elders quorum president and instructor and is currently second counselor in a bishopric.

Mark A. Ferrin '76

Mark Ferrin was with the U.S. Navy until 1980, and

he is now with the Department of Defense General Counsel, serving as the senior civilian attorney representing DOD activities/agencies in Europe, Africa, and the Middle East. Mark was the attorney for Farmington City, Utah, from 1980 to 1984. Currently he serves as counselor in a stake presidency for German servicemen.

Robert C. Fillerup '76

Robert Fillerup began practice with a Provo firm and then went on to be a solo practitioner, where his representation of the Utah Lake Land Owners resulted in the dredging of the Jordan River. He has also been president of the Utah Trial Lawyers Association. Currently he is the president and founder of Code-Co, which is a law publisher for the *Utah Code*, *Utah Supreme Court Cases*, and other legal publications. They also put out a monthly legal magazine. The company is based in Orem, Utah.

Cindy Webb Frazier '81

Cindy Webb Frazier is currently with Lazzarini & Frazier in Walnut Creek, California. She began work with Craddick & Candland following graduation and went on to the law offices of Robert W. Lazzarini until 1983. Cindy says she has had the opportunity to gain a vast amount of civil litigation experience in a short period of time—trying, and winning, her first two-week jury trial after only seven months of practice. Perhaps the highlight of her career thus far has been representing several plaintiffs against a local mortgage loan broker, where they were

not only able to recover a substantial settlement, but they succeeded in having the broker's real estate license revoked and assisted the district attorney in pursuing civil penalties against the broker. Cindy has given several lectures to local real estate escrow companies about new aspects of California real estate law. She has been actively involved in the Church, serving in many capacities in the Young Women organization, the Relief Society, and the Primary.

David L. Glazier '81

David Glazier accepted a position with Park & Robinson in Provo after graduation. The firm name changed to Robinson, Nelson & Glazier in 1986 and is now called Robinson & Glazier of Provo, Utah. His practice deals mainly with corporate and business law, estate planning, and real estate. David has been a Provo Temple ordinance worker since 1982 and prior to being called to the bishopric in 1986 served on the high council.

Randy E. Godard '81

Randy Godard spent his first year in practice with Cary, Ames & Frye. He left the firm to join the Rapada Corporation and remained with them until April 1983. He is now with Allied Corporation in Illinois. His practice focuses on general, corporate and international law. Randy's career has enabled him to handle international legal matters involving Pakistan, Korea, Japan, India, Republic of China, Portugal, Germany, France, Israel, Oman, and the Ivory Coast in the areas of petroleum law and inter-

national finance. However, he still has time to have some fun and be a Little League soccer coach. Randy has been actively involved in the Church, serving as a seventy, which has enabled him to be called on three stake missions since graduation.

Peter K. Hanohano, Jr. '81

Peter Hanohano is currently with the Office of the Public Defender in Wailuku, Hawaii. He has been first counselor in the Kahului Hawaii Stake mission presidency since April 1986.

Donald L. Harris '76

Donald Harris spent three years with the attorney general of the State of Idaho and then spent four years with the U.S. Department of Justice—U.S. Attorney (Idaho). Currently he is with Holden, Kidwell, Hahn & Crapo of Idaho Falls, Idaho. There he specializes in civil and criminal litigation. One highlight of his legal career was the 1979–80 prosecution of the “Sun Valley 32”—32 cocaine dealers—while assistant U.S. attorney. Donald served on the Bar Examination Preparation Committee from 1979 to 1982, on the board of directors of the Kiwanis Club of Idaho Falls, and in 1986 he helped with the Idaho Falls Heart Fund Drive. Donald has been gospel doctrine instructor, assistant stake clerk, Cubmaster, Young Men president, priests quorum advisor, a member of a bishopric, seventy, stake mission president, and missionary.

Robert D. Herrick '81

Robert Herrick accepted a position with Smith & Hilbig of Torrance, California,

after graduation, and he remained with them until July 1985. He is now with Maroney, Brandt & Holdaway of Upland, California, where he specializes in general business and business litigation. Robert participated in a major \$30+ million test case involving thirteen oil companies in a dispute over windfall-profits taxes. Robert has done a substantial amount of work for the cities of Norco and Upland, California. He has been involved in his local elders quorum and Young Men presidencies.

Matthew M.F. Hilton '81

Matthew Hilton started his law career with a federal clerkship and then became an in-house counsel for F.M.A. Agri Corp. in 1982. In 1984 he became an associate and counsel with Rulon T. Burton & Associates. Matthew is now a solo practitioner engaged in general practice with emphasis on bankruptcy and constitutional and international practice. He is currently pursuing his Ed.D. at BYU and expects to graduate in August 1987. Matthew has been actively involved on local and national levels in Boy Scouts of America and has been a Scoutmaster and a member of an elders quorum presidency.

Richard E. Holdaway '81

Richard Holdaway has been with Maroney, Brandt & Holdaway of Upland, California, since graduation. The firm specializes in general civil practice with primary emphasis on personal injury claims. The firm's practice also includes real estate and business litigation and provides city

attorney services to the cities of Upland and Norco, for which Richard is the deputy city attorney. His involvement in the Church has included service as a Sunday School president and a member of the stake Young Men presidency. He is currently serving as elders quorum president.

Mark Hale Howard '81

After graduation Mark Howard accepted a position with the IRS District Counsel in Denver. In 1985 he transferred to the Utah office. He has been a Scoutmaster, stake Blazer leader, seminary teacher, and Primary teacher.

Jeanne Bryan Inouye '81

Jeanne Bryan Inouye began her law career as a law clerk for Judge J. Clifford Wallace on the U.S. Court of Appeals for the Ninth Circuit. After completing the clerkship, she accepted a position with VanCott, Bagley, Cornwall & McCarthy of Salt Lake City until September 1983. She is now a full-time homemaker. Jeanne was a member of the planning committee for the 1986 BYU Women's Conference. During the years from 1982 to 1984, she was a member of the Relief Society General Board. Currently she is a visiting teacher and wife to the bishop of a BYU married-student ward.

Scott E. Isaacson '81

Scott Isaacson has been with Davis, Graham & Stubbs since graduating from Law School. His work has included representation of national and international banks in their oil and gas financing. He has documented dozens of large loans—one for more than

\$1 billion. Scott helped to open the new Salt Lake City office for Davis, Graham & Stubbs. He is on the board of directors for the Salt Lake Children's Choir and has been actively involved in the Boy Scouts organization.

Robert A. Johnson '76

Robert Johnson accepted a position with Judge Ozel M. Trask of the United States Court of Appeals for the Ninth Circuit. After a year with him, Robert went with Wilkinson, Cragun & Barker of Washington, D.C. In 1979 he joined Kimball, Parr, Crockett & Waddoups of Salt Lake City and is still with them. Robert specializes in real property (acquisitions, development, and financing), commercial lending, and corporate counseling. In 1983 he had the opportunity to be an adjunct professor of law at the University of Utah College of Law.

Craig M. Lundell '81

Craig Lundell accepted a position with Fox, Edwards & Gardiner of Salt Lake City upon graduating from the Law School. He remained there until 1983 and is now with Arnold, White & Durkee of Houston, Texas. Craig is active in the Boy Scouts of America and has been an elders quorum president as well as a Young Men president.

Ron Madson '81

Ron Madson began his law career with Steffen, Simmons & Vannah in Las Vegas, Nevada. He is now a partner in Simmons, Madson & Snyder, also of Las Vegas. The majority of his practice consists of representing plaintiffs in personal injury claims. Ron represented RCA

Corporation in southern Nevada during the past three years and represented the Memphis Americans in a claim against the owners of the Las Vegas American MISL franchise for breaching their agreement to purchase the soccer franchise from its clients. Ron has been an assistant ward clerk, stake missionary, and ward mission leader. In June 1986 he was ordained a high priest and called to serve as a stake high councilor. Ron is proud of his new foosball table, and he keeps active playing basketball year-round and softball each summer.

Paul J. Mooney '81

Paul Mooney accepted a position with Fennemore, Craig, Von Ammon, Udall & Powers after graduation. This Phoenix firm deals mainly with civil litigation. Highlights of Paul's practice include winning a \$1.5 million jury verdict in the first Diaphragm-TSS case tried in the United States. He also won a major property-tax case against the State of Arizona, resulting in a \$7 million tax refund. Paul became a partner and shareholder of the firm on July 1, 1986. Paul is or has been a member of the Arizona Chamber of Commerce, the Joint Arizona Legislative Committee on Property Taxation, and the campaign staff for Rawles for Congress and an arbitrator for State Bar—Fee Disputes & Mandatory Arbitration Cases. He has been an elders quorum president and is now a Sunday School teacher.

Merle Morris '76

After graduation Merle Morris began his own private practice in Kanab,

Utah. He is now in solo practice in Provo, Utah, and is studying at BYU for his master of accountancy with an emphasis in taxation. The Kanab City attorney from 1977 to 1981, Merle says that practicing law in a small southern Utah town was an interesting experience—the variety of disputes and legal issues arising in such a small place is amazing. He was on the Kanab Variety Arts Council and also served as the city and county convention delegate for the Republican Party. He has been a Sunday School teacher, ward clerk, Blazer leader, stake librarian, elders quorum president, and a member of a Sunday School presidency.

Glade A. Myler '81

Glade Myler began work with McCullough & Jones of Orem. Six months later he moved to Nevada and worked with the Clark County Public Defender's Office and then with the State Industrial Insurance System. He is now the assistant district attorney for Pershing County, Nevada, and is living in Lovelock. During the summer of 1984, he attended the National College of District Attorneys at the University of Houston. Glade was involved in *State of Nevada vs. Gerald Armond Gallego*, a kidnapping and murder case that received national attention. Glade is a member and first vice-president of Lions International and is also a member of the Pershing County Economic Development Committee. He has been a choir director, organist, Sunday School teacher, and high councilor.

J. Steven Newton '76

J. Steven Newton began his

legal career with Romney, Nielson & Cassity in Salt Lake City. In 1979 he joined Newton & Ivins. Currently he is the mayor of Sandy City, Utah. In his practice he handled a case of first impression about the rights of the insane in criminal institutions. He has been on the Sandy City Council since 1980 and was chairman of the Sandy Redevelopment Agency in 1983.

D. Gary Peterson '76

D. Gary Peterson is in Driggs, Idaho, with his own general practice. He feels that although an extensive ERISA practice with a law firm in Salt Lake was enjoyable, looking out over the Grand Tetons every day for the last five years of practice has been a highlight that no "major or most-interesting case" can come close to. Gary is the founding member of the Teton Valley Businessmen's Association. He is currently the precinct chairman of the Teton County Republican Committee and is also the city attorney for both Driggs and Victor, Idaho. He has been a Sunday School teacher, ward executive secretary and ward financial clerk and is currently elders quorum president.

Clark A. Price '81

Clark Price has been with Navy JAG since graduation. He began his practice in Pensacola, Florida, and is now in Bremerton, Washington. Clark was defense counsel in the first three contested urinalysis-based courts-martial in the Pensacola Naval Community. He is now prosecuting and has a 100 percent conviction rate as trial counsel. Clark has been actively involved in the

Church as a Young Men president and elders quorum president, and he is currently serving as a stake high councilor.

Beverly A. Ramsey '81

Beverly Ramsey accepted a position with Watson, Seiler & Orehoski of Provo after graduation and remained until 1986. She also worked part-time for Utah County during 1984-85. Currently she is with Tate and Bywater Ltd. of Vienna, Virginia. Her practice there consists of personal injury and medical malpractice cases. One highlight of her career thus far was being a coprosecutor on three capital homicide cases in 1985, including the Lafferty murders. Beverly has been a gospel doctrine teacher for three years.

Paul H. Robinson '81

Upon graduation Paul Robinson accepted a position with McGladrey, Hendrickson & Pullen, CPAs. He remained with this firm until 1984. He also was a lecturer for the Department of Accountancy at the University of Wisconsin in 1983-84 and 1986-87. Paul is currently corporate counsel to Gundersen Clinic, Ltd., of La Crosse, Wisconsin, a medical clinic of more than 200 physicians. Paul became a certified public accountant in Wisconsin in October 1985. His civic duties include being president of Mobile Meals of La Crosse, Inc. (Sept. 1985 to present). Paul has been in a bishopric and on a stake high council and is currently the bishop of the La Crosse Ward. On 1 September 1986 Paul and his family were able to move into their "dream home" on five acres atop Grandad

Bluff, which overlooks the Mississippi River.

C. Val Steed '81

C. Val Steed is with the Las Vegas City Attorney's Office, where he mainly practices municipal law, planning, and zoning. He has been involved in the Church by serving as a primary pianist and deacons quorum advisor and counselor, and he is currently the elders quorum president.

James W. Stewart, Jr. '81

James W. Stewart clerked for Judge Stephanie Seymour of the U.S. Court of Appeals for the Tenth Circuit Court after law school. He returned to Utah and joined VanCott, Bagley, Cornwall & McCarthy of Salt Lake City until July 1985, when he moved over to Jones, Waldo, Holbrook & McDonough, also of Salt Lake City. There he specializes in litigation/labor and employment law. He represented Western Electric (now AT&T Technologies) in a successful federal court action on age discrimination. James is currently a member of the Utah State Bar Alternative Dispute Resolution Committee. He has been a member of the executive council of the Utah Bar Young Lawyers' Association and chairman of the Bicentennial Committee for the Young Lawyers' Association. James has served in an elders quorum presidency and as a Sunday School teacher.

Stephen J. Sturgill '81

Jerry Sturgill accepted a position with the U.S. Court of Appeals for the Ninth Circuit after graduation. He is now with Latham &

Watkins' New York office, where he specializes in corporate and banking law. Jerry worked on Ted Turner's hostile takeover attempt of CBS and represented the asbestos victims' committee in the Manville Corporation bankruptcy. He is now working on a leveraged buy out of a major retailing division of W.R. Grace & Co. Jerry has been a Sunday School president, seminary teacher, and elders quorum instructor. He says that while his practice has gone uphill, his golf game has definitely gone downhill. Gone are the days when Craig Carlile and he could break 50 while playing at Timpanogos Golf Course.

Reid Tateoka '81

Reid Tateoka accepted a position with McKay Burton & Thurman of Salt Lake City upon graduating from the Law School. There he deals mainly in litigation, collection, and oil and gas law. He also argued before the U.S. Court of Appeals in *Brierley v. Schoenfeld* and before the Utah Supreme Court in *Bennion v. Gulf Oil*. He has served as a small-claims court judge, president of the Park Place Homeowners Association, and treasurer of the Japanese American Citizens League. In the Church he has served as an elders quorum president and is now in the bishopric of the Cottonwood Fourth Ward.

John A. Thomas '81

John Thomas has been with the Phillips, Lancaster & Thomas firm of Evanston, Wyoming, since graduation. The firm engages in general practice.

James E. VanderRoest '81

James VanderRoest is with Vlachos, Jerkins, Hurley & Levine of Kalamazoo, Michigan. The firm engages in general practice with emphasis on appellate and probate law. James has served as the State Bar of Michigan Representative Assembly member for the Ninth Circuit and on the State Bar of Michigan Constitutional Law Committee. He has been in an elders quorum presidency, has taught Primary, has been an assistant Scoutmaster, and is currently serving as the executive secretary of the Kalamazoo Michigan Stake.

Paul M. Warner '76

Paul Warner began his career with the United States Navy Judge Advocate General's Corps and served there until 1982. Currently he is with the Utah Attorney General's Office working as the associate deputy attorney general. In 1984 he received his master of public administration from BYU. Paul's civic involvement includes the American Inns of Court VII, Salt Lake County Bar Executive Committee, and being adjunct professor of the Westminster College Paralegal Program and Major, JAG, Utah Army National Guard. Paul has been a bishop and also a stake high councilor.

Gregory L. Williams '81

Gregory Williams worked with Shackelford, Farrison, Stallings & Evans from 1980 until 1982 and then for Cicero, Lund & Williams until 1985. He currently practices with Smith & Williams of Tampa, Florida. Gregory specializes in real property and commercial litigation.

Letters***D.C. Is Delightful***

Some astute person once described Washington, D.C., as "a federal enclave surrounded on four sides by reality." I think he was right, though I'm not sure, because I am for the present on the unreal side of the equation.

I suppose it would not be too far off the mark to compare being a lawyer in Washington to being a terrorist in Beirut. There is no shortage. Passing the bar may still be newsworthy in Blanding, but there are 26,888 lawyers in Washington, which is over twice as many as in the entire country of Japan.

I am, however, a lawyer in Washington and must somehow cope with this professional omnipresence. Fortunately, the task has not been difficult. Not all lawyers practice the same kind of law, categorically or qualitatively. Just as there are many kinds of terrorists, there are many kinds of lawyers. Every variety can be found in Washington.

My working life to date, a decade removed from law school, has had stops as a private-firm litigator in Utah, a corporate general counsel in the Middle East, and my present duties as an administrative assistant and legal counsel to a senator. Each experience has been well worth the time and effort. Private litigation has been the most demanding, corporate work the most mundane, and government work the most varied.

My present work runs the gamut from preparing questions for hearings before the Senate Judiciary Committee to amending the Congressional record to

eating jumbo shrimp at a Washington fund-raiser.

On balance, I believe legislative lawyering doesn't receive its fair due. Law reviewers want a Wall Street post office box, not a crowded office on Capitol Hill. And, in a sense, that's too bad. It has always struck me as strange that the emphasis on lawyering is after the fact; after the laws, and their flaws, have been drafted and enacted and sent to their final resting place in the United States Code.

Have you ever tried to repeal a law?

The legislative branch of government offers lawyers the chance to write laws, not an altogether bad line of work for people who are going to get blamed for the content of laws anyway. So I am left wondering why there isn't more emphasis on training lawyers to draft legislation. Perhaps there would be fewer lawyers if we spent as much time making laws as we do challenging and interpreting them.

This is awfully good work if you happen to get into it. The atmosphere is invigorating, and the pace is rapid. There may not be a more stimulating environment for lawyers to work in than in this city, where your work on Tuesday is often major news on Wednesday.

If any of your students are interested, I'd be happy to talk to them. There are many good choices in a legal career. Government service is one of them.
Dee V. Benson

Congratulations

I just read, with great interest, the fall 1986 edition of your *Clark Memorandum*. I was deeply impressed. That's a first-rate

piece of work, and I know someone must have spent many long hours on it. Whoever on your staff who did all the work should receive real congratulations. Putting out an exceptional alumni publication is no small matter. Congratulations on a first-rate effort.
Frank T. Read
Dean
College of Law
University of Florida

It was with great interest that I received and devoured the most recent edition of the *Clark Memorandum*.

I read the entire publication from cover to cover and genuinely appreciated the informative articles.

You are to be congratulated on this excellent publication. In my assessment, this publication has done much to vindicate the high regard and commitment to excellence we have come to expect from the J. Reuben Clark Law School.
Beus, Gilbert, Wake & Morrill
By Paul E. Gilbert
Phoenix, Arizona

Clark Memorandum welcomes letters to the editor. Letters should include the writer's name and address and should be mailed to Editor, *Clark Memorandum*, 338 JRCB, Provo, Utah 84602.

