


Fall 1990

## Clark Memorandum: Fall 1990

J. Reuben Clark Law Society

J. Reuben Clark Law School

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# CLARK

M E M O R A N D U M

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C O N T E N T S

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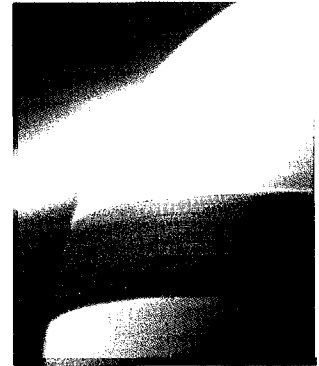
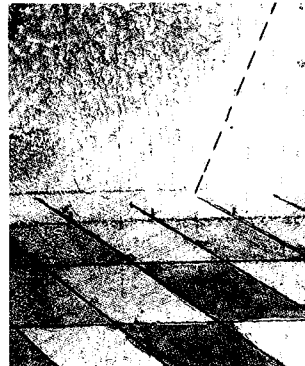
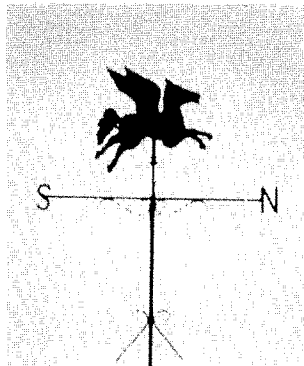
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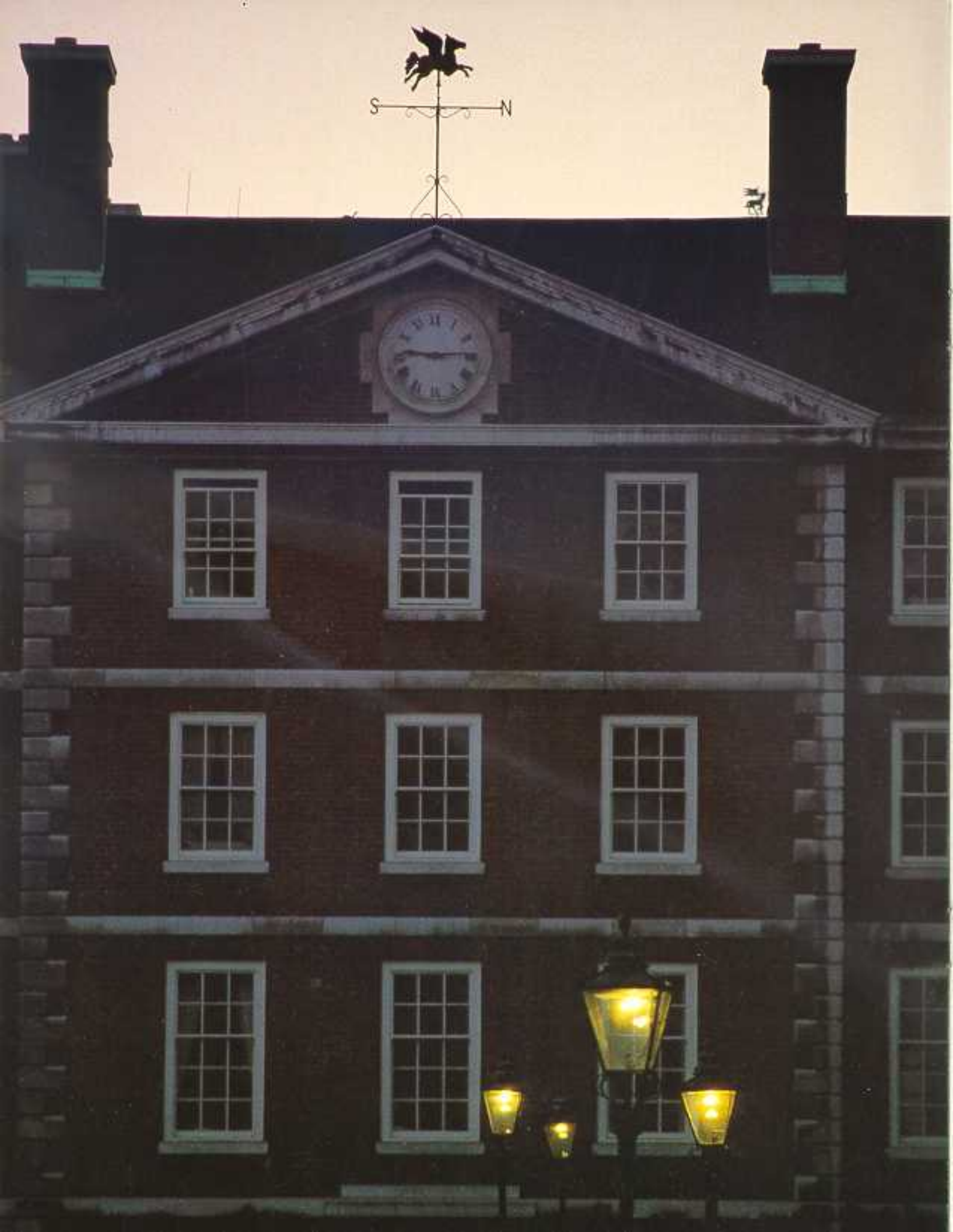
Fall 1990

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Cover Photograph: One of more than 80 19th-century gas lights outside the crenelated wall of the Temple Church. Many of England's legal conventions were formed through the Inns of Court located here.





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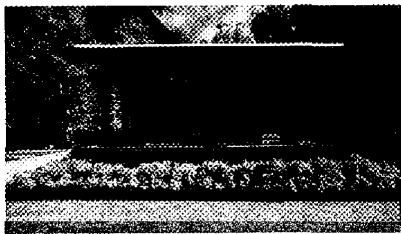
THE  
AMERICAN  
INNS OF  
COURT

# A Q U I E T

# C R U S A D E

**O**N THE FIRST DAY OF JUNE 1990, the nation's capital hosted a most impressive gathering. Those who attended carried no banners, wore no armor, and certainly brandished no weapons of war. Yet, with infectious enthusiasm they rallied to the call of a worthy cause. They had joined the movement Chief Judge Howard T. Markey has called "a quiet crusade to save the legal profession."

The occasion for this gathering was the Sixth Annual Meeting of the American Inns of Court (AIC). Dozens of state and federal judges, several law school deans and professors, and hundreds of attorneys



converged on Washington, D.C., to discuss the goals of the AIC movement—to promote excellence in legal advocacy by improving skills, ethics, civility, and professionalism. In this context, Inn members from across the nation addressed the great challenges confronting the legal profession today.

Among the many challenges addressed were: (1) the decline in integrity, collegiality, and even common courtesy in the courtroom,

important "bottom line," and (4) the decay in professionalism as vigorous representation rapidly gives way to the abusive tactics of a vicious litigating game in which winning has become everything.

The "quiet crusaders" were joined by retired Chief Justice Burger, retired Justice Powell, Associate Justices Brennan, O'Connor, and Kennedy, Solicitor General Kenneth Starr, and the presidents of the ABA (American Bar

(2) the dehumanizing effect of ruthless competition and increasing billable-hours requirements on young associates, (3) the pressure on firms to endorse "hardball" business practices to increase the all-

Opposite: A building marked by the winged pegasus, a symbol of ownership by the Inner Temple of the English Inns of Court.

The Holy Lamb and Flag is the symbol of the Middle Temple.

Left: O. C. Tanner's river home, birthplace of the American

Inns of Court.

...

THOMAS H. CUTLER

...

*“One of  
the most  
significant  
developments  
that has  
occurred in  
the legal  
profession in  
the last  
decade.”*

— REX E. LEE



KARRAS

**The Right  
Honorable, the  
Lord Goff  
of Chieveley  
represented  
the English  
Inns at the  
AIC meeting.**

Association), ATLA (Association of American Trial Lawyers), and ABOA (American Board of Trial Advocates)

That the movement can command the attention of such prominent members of the legal community is surprising, considering the first American Inn of Court was established only ten years ago in Provo, Utah. Since then, however, the movement has spread at an exponential rate to 36 states and the District of Columbia. There are now 124 Inns boasting a total membership of over 7,500. This membership includes nearly 600 state judges and one out of every four federal judges

Given such statistics it is understandable that former Solicitor General Rex E. Lee has called the AIC phenomenon “one of the most significant developments that has occurred in the legal profession in the last decade” (It is also understandable that as president of Brigham Young University and former dean of the BYU Law School, he would add with justifiable pride: “And it had its beginnings right here at the Law School!”)

To understand why the movement has enjoyed such success, we must first look at its rich historical heritage. The American Inns owe their conceptual inspiration to the venerable English Inns of Court in London. The four great Inns, the first of which was built in the late 1400s, were established as fraternal residences for the Royal Court’s entourage of practicing barristers. Characterized by a spirit of collegiality and candor, the Inns rapidly became the centers of legal thought, culture, and practice in England. Because of the free exchange in the Inns, the legal practice became more unified and standards of professional competence, etiquette, and ethics emerged.

Without schools of law (the universities of the time taught only classical Greek and Roman law), a system of “pupillage” developed in the Inns. The more inexperienced barristers observed firsthand the conduct and lifestyles of the “masters” of the bar and bench. In this way the high standards of professionalism so characteristic of English legal practice have been fostered and perpetuated from one generation to the next.

One of the English Inns’ most illustrious residents is the Right Honorable, the Lord Goff of Chieveley, a “Law Lord” of the English House of Lords. (He is a “Lord of Appeals in ordinary” but there is assuredly nothing ordinary about either his person or position—he is comparable in status to a U.S. Supreme Court Justice.) Lord Goff explains that although fewer Inn members still

live in the Inns, the Inns are still used today in essentially the same way they have been used for four centuries. Inn members continue to meet daily in the historic dining halls of the Inns to eat, socialize, and exchange ideas. With this continual association among their members, it is not surprising that the Inns continue to have a formidable unifying and tempering influence on the English legal profession. And, after four hundred years the Inns continue to be bastions of legal ethics, civility, and professionalism.

When Judge J. Clifford Wallace of the Ninth Federal Circuit toured England in 1977 as a member of a U.S. team assigned to examine the English legal system, he was understandably impressed with the Inns of Court. As they waited outside their hotel in London, he suggested to Chief Justice Burger that there might be some way to adapt the Inns of Court concept to American practice. The idea intrigued the chief justice, and he asked Judge Wallace to explore the possibility. After several months of such exploration, Judge Wallace recommended that a pilot program be initiated and sent the chief justice an outline explaining how he might proceed.

In 1979, while Chief Justice Burger was visiting his long-time friend O. C. Tanner near Salt Lake City, Utah, he summoned Dallin H. Oaks (then president of Brigham Young University) and Rex E. Lee (then dean of the Brigham Young University Law School) to an informal meeting at Mr. Tanner’s river home. Foremost on the chief justice’s agenda was the establishment of an Inns of Court program. To test the concept’s viability, he proposed that a charter program be initiated in conjunction with BYU’s J. Reuben Clark Law School.

Recognizing the value of a system that could bring the wisdom and experience of the veterans of the bench and bar to students and young attorneys (and finding it difficult to refuse the chief justice of the United States!), Rex Lee accepted the proposal. Pledging the support of the school, Dean Lee recommended that A. Sherman Christensen, who had recently become Utah’s senior federal district judge, head the program.

Although in his 75th year, Judge Christensen accepted the challenge gallantly. As an adjunct professor of BYU, Judge Christensen had been closely involved with the Law School for several years. He had taught seminars in appellate and trial advocacy at the Law School and felt keenly the need for improved advocacy training in legal education.

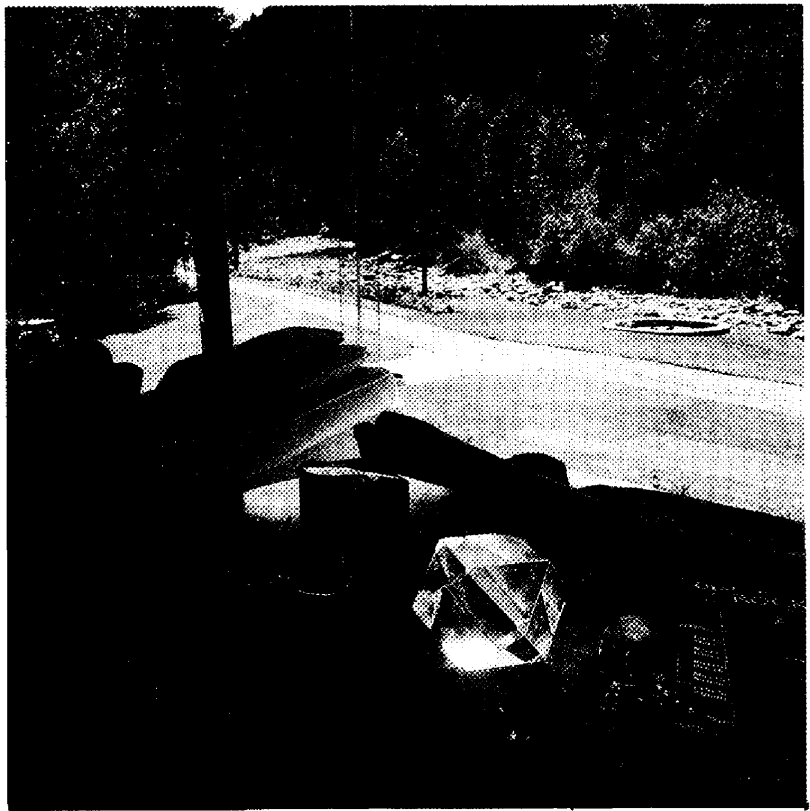
After accepting his mission from the chief justice, Judge Christensen promptly set about

his task with vision and enthusiasm. At his own expense, he flew to London to study the English Inns. After touring the four historic Inns and conversing with their members, he drafted the charter for the first American Inn and included the following as its general objectives:

*[T]o unite a cross-section of the bar into a forum for the promotion of excellence in legal advocacy as a calling and as an individual capability; to promote fellowship of the bar, the bench and students of the law; to provide congenial, stimulating and cooperative interaction among students, lawyers and judges whose primary professional interests are in aspects of trial and appellate practice; to contribute to essential reforms and improvements in the training and performance of legal advocates; to facilitate the transition of law students and young lawyers into the operation of our court system; to extend relationships among students and lawyers to the sharing of experiences in law offices and courts through adaptation of the "pupillage" system of the English Inns; and to preserve, foster and adapt for contemporary need in the United States the genius and strengths of the common law and the English Inns of Court, "renewing and inspiring joy and zest in legal advocacy as a service worthy of constant effort and learning"*

Having thus defined its worthy aspirations, Judge Christensen began the formidable task of creating a practical program that would embody the spirit of the English Inns. He proceeded by inviting "masters of the Bench" (judges, law professors, and veteran attorneys), barristers (moderately experienced attorneys), and pupils (third-year law students and inexperienced attorneys) to meet one evening per month during the scholastic year. He planned for Inn members to divide into "pupillage" teams responsible for preparing demonstrations of court proceedings. After the demonstrations, Inn meetings would be opened up for discussion, critique, refreshments, and socializing.

Before the first meeting of American Inn of Court I, Rex Lee and Judge Christensen made a friendly wager about its attendance. Dean Lee cautioned Judge Christensen not to get his hopes up, as they could not expect full attendance at a voluntary meeting of an experimental program. The judge in turn assured Dean Lee that all those that had said they would come to the meeting, would come. Each pledged a greater personal contribution to the AIC cause if he lost. Judge Christensen won that wager—and the AIC movement was



all the richer. As an indication of his dedicated efforts and irrepressible enthusiasm, the AIC's first meeting had perfect attendance.

Ralph Dewsnup, an alumnus of the BYU Law School, remembers that he had been out of law school only three years when Judge Christensen asked him to be a charter member of AIC I. Mr. Dewsnup was later appointed to the national Ad Hoc Committee on the AIC in 1983 and now, besides his successful practice in Salt Lake City, Utah, serves as secretary to the AICF Board of Trustees, trustee, and editor of the AICF newsletter. From his continuous experience with the AIC since its inception, he offers insight into the program's practical success.

Mr. Dewsnup attributes the AIC's success to several important factors. First, the program works. He explains that many concerns, especially ethical ones, can only be improved when they are talked about. The Inns provide effective forums for discussions on professionalism and ethics.

Second, *all* participants in the Inns benefit from the "collective wisdom of their colleagues." Of course, law students and inexperienced trial lawyers benefit from the close association and tutelage of the "masters" of the bar and bench. But, the masters themselves also profit from their colleagues' feedback and from the fresh insight of young

The interior of  
O. C. Tanner's  
river home  
in Woodland,  
Utah. Chief  
Justice Burger  
dedicated the  
home as a  
historic site  
in 1988.

*"If the  
profession itself  
does not uphold  
higher standards,  
they will be  
imposed by  
the legislature.  
That would  
be fatal."*

—CHIEF JUDGE

HOWARD T. MARKEY

attorneys and law students experiencing legal processes for the first time. Mr. Dewsnup describes this exchange as having a "leavening" effect on the entire profession.

Third, the informality of the AIC interaction encourages free exchange of ideas in a nonthreatening environment. He points out that "no one's actual life fortune or liberty is at stake when the pupillage teams present their simulations of trial or appellate proceedings." Since the Inn members meet in an attitude of detachment and learning, new ideas or techniques can be advanced and poor practices can be deliberately exposed to generate response and discussion.

As a tribute to Judge Christensen's practical insight, the program that he chartered a decade ago at the BYU Law School in Provo is still being used with only minor adjustments in the 124 Inns now organized across the nation. As a further tribute to Judge Christensen's valiant efforts in pioneering the AIC, and as a formal acknowledgement of the significance of the AIC movement, this year the American Bar Association awarded Judge Christensen its highest honor, the ABA Medal Award. The award holds special significance for Judge Christensen, who, speaking of the AIC movement, confides: "It is very close to my heart." In receiving the award, Judge Christensen joins company with Warren

Burger, Lewis Powell, and several past presidents of the ABA.

Although Judge Christensen never dreamed the movement would reach its present proportions, he always hoped that something significant would come of it. In the first three years only three new Inns were formed. With no funding and no official federal support, the future of the American Inns seemed uncertain.

But Judge Christensen's hope and diligence finally paid off. In 1983 Chief Justice Burger organized a national ad hoc committee to explore the utility and potential of the American Inns of Court. In 1985, on the committee's recommendation, the American Inns of Court Foundation was established for the movement's promotion.

Professor Sherman L. Cohn of the Georgetown Center of Law, one of the most valiant crusaders in the AIC cause, was elected president of the foundation. Michael Daigneault, executive director of the AICF, explains that just as Judge Christensen is responsible for founding the AIC program, Professor Cohn deserves credit for "telling the world" about it. Mr. Daigneault recalls that when he became involved in the AIC as Professor Cohn's administrative assistant there were still only twelve AIC chapters, and two cardboard box files contained the entire movement's records. There was still no money, no staff, and no AICF office. But, with a ten thousand dollar donation from ABOTA during the first year, and a substantial commitment of his own resources, Professor Cohn began, in his own words, to simply "spread the gospel."

Under the influence of Professor Cohn's enthusiasm (one has to spend but a moment with Professor Cohn to experience the inspiring effect of his energy and sincerity), the AIC "gospel" has now found converts in nearly every state in the Union. In the five years of Professor Cohn's leadership, the number of Inns across the nation has increased more than ten-fold. And, as the movement's phenomenal growth continues, its significance and permanence in the American legal community seem assured.

As the number of Inns continues to more than double every two years, proper management of the growth itself has become a great challenge. There are waiting lists to get into many of the Inns. People on waiting lists are encouraged to start their own Inns (a task that is easier than it appears, according to several who have done so). But scarce judicial resources, especially federal judges, must somehow be shared equitably with new Inns.





And as it becomes more difficult for the national office to meet the specific needs of individual Inns, regional administrative organizations must be developed. Naturally, increasing demand on administrative funds parallels such growth

Still, both local and national AIC officers face such challenges with vigor. Sustained by the promise of success, the "quiet crusaders" press forward in their rallying cause. As a result, they have already begun to see the fruits of their labors. Several state and federal judges have reported improvements in civility and professionalism since the American Inns have been established in their jurisdictions.

However, Chief Judge Markey of the Court of Appeals for the Federal Circuit, chairman of the AICF Board of Trustees, cautions, "We don't have time to worry about what immediate impact we are having on the profession. That will come. It's bound to come. It must come. But it is going to take time—a lot of time. The profession didn't get to where it is today overnight, and its problems aren't going to be solved overnight." Yet, he remains committed to what he, himself, has termed the "quiet crusade to save the legal profession." "It is quiet," he explains, "because we are not screaming and hollering and carrying banners in the streets or 'policing' the profession. But," as he makes emphatically clear, "it is a crusade."

Though it has impressive historic beginnings, practical efficacy, and has been pushed along by the heroic efforts of many people, the movement seems fueled by something more fundamental. Michael Daigneault attributes the AIC's remarkable growth to "a tremendous need in the legal profession" for what the Inns have to offer.

In a sense, the success of the AIC movement itself could be seen as a sad commentary on the plight of the profession. The fact that an organization devoted to restoring legal ethics, civility, and professionalism would elicit such widespread response seems to suggest just how great the profession's need really is. On the other hand, as Mr. Daigneault observes, "the profession must be given a lot of credit. It is responding enthusiastically to the message of the AIC."

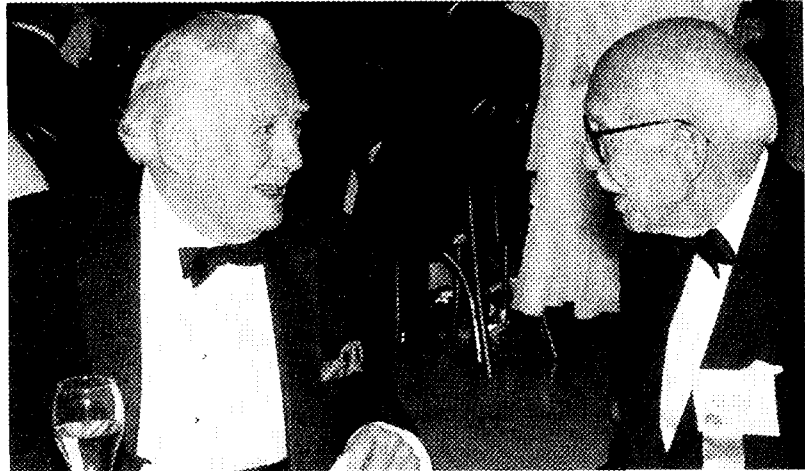
Professor Cohn views the legal profession's plight with a great sense of urgency. Noting the decline in ethics and professionalism—and the corresponding decline in public opinion about the profession—he fears that the profession could lose its privileges as an independent bar. (He hastens to add that if the profession does not reverse its decline, it

will *deserve* to lose them.) Without the freedom to vigorously advocate and challenge matters before the courts, he fears that the underpinnings of the rule of law itself will be threatened. Still, Professor Cohn adds optimistically that "the AIC is trying to change all that—to preserve the independence of the bar and to earn the respect of the American people again."

Chief Judge Markey shares both Professor Cohn's concern and optimism. "The secret to American justice," he explains, "lies in its independent courts supported by an independent bar." Noting that independence is



KARRAS



KARRAS

lost by irresponsibility, he says, "If the profession itself does not uphold higher standards, they will be imposed—imposed by the legislature—by rules and regulations. . . . That would be fatal."

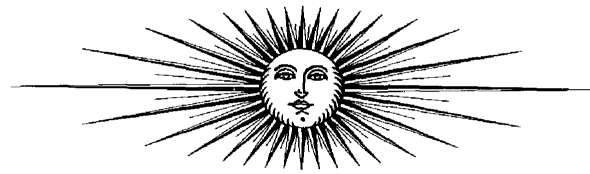
Nevertheless, with unshaken conviction the chief judge maintains: "I believe the day will come in the United States when no lawyer will think of entering a courtroom to try a case or, indeed, will think of negotiating a contract, who is not a member of an American Inn of Court. Not by law, not by rule, not by force—but solely by choice."

The story of the Inns of Court movement is an inspiring one. Perhaps what makes it most inspiring is that it is about people—legal practitioners who still care enough about their profession to self-sacrifice for its improvement and preservation. For a profession with an ever-growing army of quiet crusaders, perhaps there is still hope.

*For more information about the American Inns of Court, contact Michael G. Daigneault, Executive Director, American Inns of Court Foundation, 1225 Eye Street, N.W., Suite 300, Washington, D.C. 20005, phone (202) 682-1613*

Top right: Michael Daigneault, executive director of the AIC Foundation. Above: Chief Justice Warren Burger, retired, and Judge A. Sherman Christensen socialize at the AIC's gala dinner in the Great Hall of the Supreme Court. Opposite: Professor Sherman L. Cohn gave the "State of the AIC" address at the opening of their annual meeting.

ACQUIRED . . . B . . . Y . . .  
CHARACTER  
NOT . . . B . . . Y . . . MONEY



Honorable Kenneth W. Starr  
Solicitor General of the United States

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This address was given  
April 27, 1990, at the  
J. Reuben Clark Law School  
Convocation Exercises.

.....



his afternoon, on this special day in the lives of the Class of 1990, I would like to pause with you for just a few minutes and look into the future, to examine the profession to which you are being called as members

The graduates here today would no doubt agree that pausing and reflecting while in law school is an important thing to do. They might even give some friendly advice to that effect, to the incoming law students who will soon be the class of 1993 here at this great institution. Back when I was worried about LSAT's and law school applications, I was working in Washington, D.C., for the State Department. I had just abandoned graduate school in political science and had made a basic turn in the career road—a turn toward the law.

During that year, I had the good fortune to work with a fellow who was spending the summer in Washington, D.C., between

his first and second years of law school at Yale. As was appropriate for a greenhorn wondering about the mysteries of law and law school, I asked this ersatz big brother what advice he would share with me, a fledgling, would-be law school rookie. He thought for a minute and said: "If I had that first year to do over, I would study less." My spirits rose, as you can well imagine, because I had heard the usual horror stories about that first year of law school. "I would study less," he went on, "and think more."

For the record, I think that's sound advice, not only for law school, but—more relevantly for today's graduates—sound advice for one's entire legal career. Unfortunately, in law, as in life, there is little need to think in order just to get by. But, as Aristotle wisely opined that the unexamined life is not worth living, so too one's life in the profession that our graduates are today entering should remain—in a constructive, positive spirit—under the gentle watch of a careful eye. Like Nora in Ibsen's enduring play, *A Doll House*, we have an obligation to come to know ourselves for what we really are.

The legal profession is at a crossroads. We in the profession are called upon in a fundamental sense to choose what it is that we are all about. I have a gnawing fear that we are gradually, but inexorably, choosing the wrong road.

Several months ago, at the midwinter meeting of the American Bar Association in Los Angeles, the American Bar Foundation took note of the career and contributions of two outstanding individuals. One is

a household name in the law, one of our Century's towering figures—Justice Thurgood Marshall.

That was a splendid event. In hearing Justice Marshall, I had a vivid sense of listening to history. There, standing before those many members of the organized bar, was the individual who stood at the podium of the Supreme Court almost 40 years ago (as the president of this great University has done with such distinction so often), and called upon the Court to do the right thing in vindicating the rights of all persons—including schoolchildren—to be free from line drawing because of race.

Counting by race, the Court held, was wrong. It is not only morally repugnant but goes against our basic constitutional values.

For all too long, of course, the Court had turned a blind eye to the constitutional and moral evil of a race-based society. Yet, the Court—and the country—labored under the harsh, corrupt regime of *Plessy v. Ferguson* for over a half century; what is more, the process of dismantling *Plessy's* quasi-apartheid system was destined to require many more years.

But ultimately the moral vision of basic human dignity and basic human rights assured by our Constitution was translated into law, through the forceful advocacy of Thurgood Marshall and his colleagues—colleagues who at the time included my former Chief Judge on the D.C. Circuit, Judge Spottswood Robinson III.

The leadership of Thurgood Marshall and his colleagues is an integral part

of a noble and enduring tradition in our profession. Not long ago I had the privilege of addressing the nation's oldest organized bar, the Philadelphia Bar Association. That bar has many traditions, but one of the proudest is to give to the leader of the bar, upon his or her retirement as chancellor of the bar, a small gold box. The box is a replica of one given two and a half centuries ago to the greatest of Philadelphia lawyers, Andrew Hamilton. It was given to Mr. Hamilton for his remarkable defense of freedom of the press in the immortal trial of John Peter Zenger. The little gold box, used in bygone years as a snuff box, bears a wonderful inscription which captures that which is highest and noblest in our profession—"acquired not by money, but by character."

A generation after that great trial in Philadelphia, 55 delegates gathered in that very city to establish a proposed framework of government. They were great men at the convention, and some of the greatest were not lawyers.

But when one examines the records of that convention, one quickly discovers that the intellectual leaders—the true shapers of our government—were lawyers. From Madison and Randolph of Virginia, to Wilson of Pennsylvania, Elsworth of Connecticut, and Paterson of New Jersey, these were individuals who had been called to the bar.

Tocqueville, that astute observer of American democracy, took note in his magnificent work, *Democracy in America*, of the extraordinary role that the law—and thus lawyers—play in the governance of

the American republic. The landed aristocracy, the merchant class of New England and the mid-Atlantic states, and the great pioneers of the West failed in the main to rise to the pinnacles of power in our representative democracy. To be sure, the country on occasion looked, as do many nations, to its heroes in war to take the helm, but its leaders and representatives have been primarily those called to the legal profession. For every Washington, Jackson, Grant, and Eisenhower, there are several Adamses, Jeffersons, Madisons, Monroes, Lincolns, and Roosevelts—those called to the law

Indeed, the importance of law—and thus of those who practice, enforce and interpret law—was abundantly evident to those sages who had not had the good fortune to read the law and to apprentice themselves to a wise lawyer of ability and integrity. It was in his first term of office that our first president, our military-hero, nonlawyer president, George Washington, wrote to the Supreme Court as follows:

“I have always been persuaded that the stability and success of the National Government, and consequently the happiness of the American people, would depend in a considerable degree on the interpretation and execution of its laws.”

That statement was written two hundred years ago this month—in the early part of April 1790. And the force of the statement resonates across the many generations and stands as a tribute to the function of the bar, of the bench, and of others entrusted with the care and custody of the law. The task was admirably

stated by former Attorney General Griffin Bell, in the title of his wonderful memoir, “Taking Care of the Law.”

That, ultimately, is the duty you will soon take on as members of the profession—to take care of the law. That, of course, is the duty imposed by the

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**R**

egret-  
tably, the profession is being seen less as a way of serving the cause of justice and more as a way to make a handsome living, perhaps to become rich, and maybe even a little famous.

.....

Constitution upon the president of the United States, who takes an oath of office prescribed by the Constitution, to take care that the laws be faithfully executed. It is a duty that rests upon all members of the executive branch (including your own Professor Lynn Wardle, laboring with us so ably at the Justice Department)

But each person in our profession is called upon to take part in that process that President Washington described. Each is to do his or her part in assuring the rule of law and fidelity to law.

It's time now to come back to the crossroads that I mentioned before.

In oral argument (as I'm sure President Lee would agree), one of the most important aspects of advocacy is to have thought the case through—to have a well-developed theory of the case. Obviously, one must know one's case. But the good lawyer must also have a well-conceived theory of the case. It will not do when the hard hypothetical comes from the bench to say in lame response: “But, Judge (or Justice) that's not this case!”

Here, then, is my theory (or, more precisely, my proposition)—the great tradition of public service of which our profession can justly be proud is in danger. The tradition of Andrew Hamilton, the tradition of the Framers, and the tradition of Thurgood Marshall is increasingly in jeopardy. That tradition is in danger by virtue of our losing our way, losing our sights as to what the profession should be all about. The profession should be a way, either through public service or through private practice, to be of service to the public and ultimately to the cause of justice. Justice—that which Sir Thomas More described so admirably as the great idea of God and the great ideal of mankind. Regrettably, the profession is being seen less as a way of serving the cause of justice and more as a way to make a handsome living, perhaps to become rich, and maybe even a little famous.

We are seeing this process at work in my office. We are very fortunate in the Office of Solicitor General to be blessed with some of the finest legal talent in the country. Our 23 lawyers have credentials that we

would be pleased, in a non-arrogant way, to put up against any law firm, public or private, anywhere in the country.

But as the years have gone by, it has become increasingly difficult to *keep* these splendid lawyers in public service. They may be with us today, but they will likely be gone tomorrow. Rare is the person who, at the outset, commits himself or herself to public service and then stays there. Indeed, if the person has done well in law school, the person may never enter public service. Success in the profession becomes translated into partnership and high income levels. Success means prosperity. The successful firm is the prosperous firm. Increasingly, the theme of our profession is “acquired by money, not by character.”

Now there are severe opportunity costs, as the economists would say, occasioned by the law-as-business environment in which the profession finds itself. Most directly, one can see a direct correlation between increases in earned income and decreases in professional satisfaction (and basic human happiness). It wasn't so many light years ago that I entered this profession and with one of the nation's leading law firms. The emphasis at the time was on the quality of one's work. Make it good. No, do better than that. Do the very best. Be the very best.

And that emphasis did not translate so overwhelmingly into the green-eyeshades folks examining with exacting scrutiny the total number of billable and collectible hours. Oh, to be sure, that factor was highly

relevant; it was important. But its place in the relative scheme of things was seen in the bottom-line fact that billing around 1700 hours or 1800 hours was right on target. And that left time—time to think, time to refresh oneself mentally, time to become involved in the community, in the church, and to be truly engaged in the family.

Something else is being lost—something very important to the well being of the profession. And that is the ancient sense in the profession that one owes something to one's country, to one's community, and to one's profession. That was, of course, the spirit at the founding of the American republic. To their great moral credit, our forebearers who devoted themselves to public service impoverished themselves in the process. In his later years, Jefferson had to sell his much beloved books to the Library of Congress to avoid acute financial embarrassment. He had not been back home at Monticello building a financial empire; he had been living life greatly, remembering and paying attention to what T.S. Eliot was destined so wisely to call "the permanent things." And he died a poor man.

"Acquired by character, not by money." It was, of course, the Apostle Paul who warned about the corrupting power of money or more precisely, the love of money. Lord Acton, centuries later, was also right about the corrosive, corrupting nature of power. That is precisely why our system of government is adorned with the elaborate set of checks and counterweights, to prevent the accumulation of power in the hands of a

single person or branch of government.

Where is the check against the corrosive power of the desire for money? As a believer in the Jeffersonian tradition of limited government, and as a subscriber to Lord Acton's maxims, the answer does not, in my opinion, lie in the all-too-easy solution in this century—to call upon government to solve the problem. Anyone who believes that government is mystically endowed with magical answers would do well to recall Bismarck's maxim, that one should never see either laws or sausages made. To believe that Washington has all the answers is, in my humble judgment, woefully misguided.

That is to say, it would be misguided, and incompatible with our traditions, to embark on a zealous regulatory mission to regulate lawyers and law firms and law fees. Let's leave that to the marketplace and the profession itself.

But we lawyers are making ourselves too costly, especially in a time when we are increasingly concerned about American competitiveness. Whether we are unduly litigious as a society, (as I think we are), or whether litigation serves entirely benign purposes in an astonishingly pluralistic society in which we take every person's rights seriously (as part of our cultural heritage of rugged individualism and, put more felicitously, the dignity of each human being), lawyers simply charge too much for their services. We should live comfortably, but we should not be so pricey that honest, hardworking Americans can't afford to talk to us.

Proposing a restructuring of the delivery of legal services in the 1990s goes wildly beyond what I can hope to accomplish in this brief set of reflections on this happy occasion. What I do think, however, is that the law-as-business movement is of such increasing force that public service is

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likely to provide an important and attractive career alternative in the 1990s. And I encourage thoughtful, prayerful consideration of that very alternative—even if only for a while—as the future now stands before you with its promise and hope.

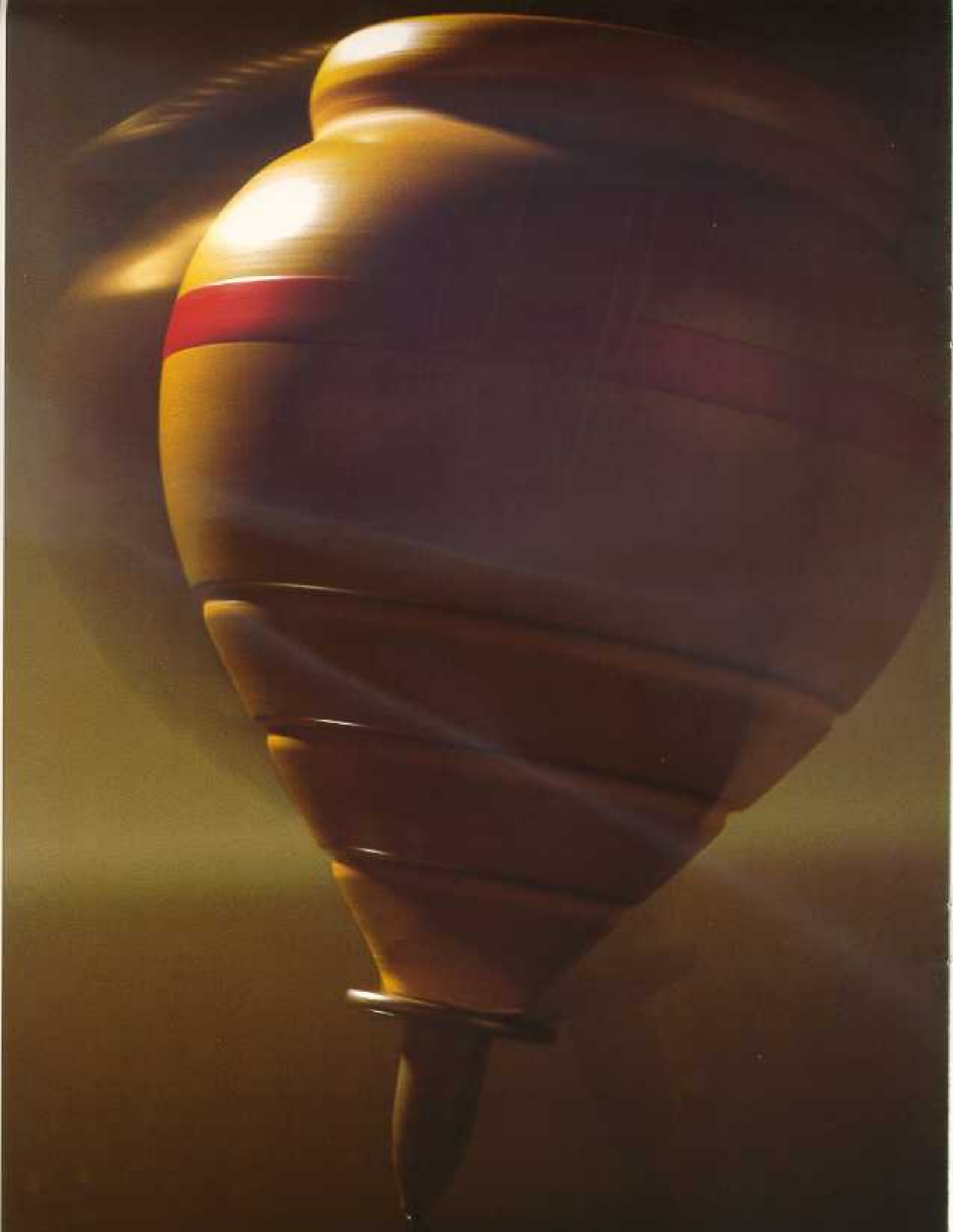
That is, with a good solid dose of humility, with a firm, good old American common-sense notion that by entering public service I am emphatically not going to save the world, public service—even if only for a brief while—provides a modest way of restoring, in each individual's own way, the original moral vision of our profession.

Everyone needs heroes. At a minimum, one needs fine examples. I cannot think of a better standard bearer, a finer example, a more splendid hero than that of your own president of this great university, a remarkable individual who has served his country so ably in the highest traditions of our profession.

It was Holmes who said, wisely and correctly, that one can live greatly in the law as elsewhere. Public service, I venture to predict, will make a real comeback in the 1990s, even with the inevitable—and I think not inappropriate—compensation gap between the private and public sectors. Despite one's politics—whether they are on the left or the right on the political spectrum, or somewhere in between—the call of public service represents that which is best and noblest in our tradition as a profession.

Jefferson, trained in the law in beautiful Williamsburg, left his heirs precious little by way of the world's possessions. But he left the country, and the entire human family, a record of astonishing accomplishment and contribution. He left the world poor, but he left the world itself immeasurably enriched by what he was and what he did.

He was imperfect, of course, falling short in countless ways, naturally. As do we all. It was, again, the Apostle Paul who wrote that "we all sin and fall short of the glory of God." But his was an ennobling life, a lawyer dedicated to the higher, loftier things, to service of his country, and to the permanent things of life, that which can be acquired not by money, but by character.



# Fundamentals and Initiatives

This fireside address  
was given to faculty and  
students of the J. Reuben  
Clark Law School on  
March 18, 1990

I am deeply grateful for the privilege of meeting with each of you on this special occasion. I bring greetings from President Benson, President Hinckley, President Monson, and members of the Quorum of the Twelve. We sincerely appreciate this law school, its faculty and student body. And we especially admire those faithful partners who sustain the efforts of their student-spouses. ♦ As a doctor, I have had the opportunity of lecturing to many medical groups, but the privilege of speaking with a congregation of lawyers is a rare one for me. ♦ But my study of law is not rare. It is a continuing commitment, which has provided the undergirding strength for all I have tried to do. Of course, my study of law has pertained largely to those divine or natural laws—put in place by our Creator—that govern the structure, function, and healing powers of the human body. These would be classified in contrast to precedents of common law or statutes enacted by legislatures. I know very little about *Marbury versus Madison*, or the case of *Brown against the Board of Education of Topeka, Kansas*. ♦ But I will identify law as an important facet of my message tonight that I have entitled, “Fundamentals and Initiatives.” I see the proper balancing of these two considerations—fundamentals and initiatives—as one of the great challenges of life.

ELDER RUSSELL M. NELSON  
of the Quorum of the Twelve

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Let us first turn our attention to the fundamentals, which include my feelings of reverence for the law

I have learned that the wise physician asks himself at least two basic questions when confronted with any patient who is ill. Question number one: Will this illness subside with the passage of time, or will it become steadily more severe? Let me illustrate with a couple of examples. If a patient has a broken rib, it will get better with the passage of time. On the other hand, if a patient has a broken mitral valve in the heart, the patient will steadily deteriorate and die

Question number two is considered if the answer to question number one is an ominous prognosis. If the illness is steadily progressive, can that deteriorating course be changed by medical or surgical intervention? In a fractured mitral valve, the downhill progression can be reversed with surgical repair or replacement of that broken valve

The conscientious physician devotes much of his study to learn the natural laws that govern the area of his concern. We could say the same for the aerospace engineer or the jet pilot whose understanding of the physical laws of "foil" and "lift" is vitally important.

Let us mentally portray this first fundamental principle as a circle of *DIVINE LAW*. Divine law is incontrovertible. It includes not only the laws of physics and physiology, but divine commandments as well. It pertains to things of eternal and everlasting worth, such

as family, father, mother, children, ordinance, covenant, and doctrine. Divine law is the most basic of the fundamentals, obedience to which may begin the building of a life of greatness. Reference is made in the scriptures to this first fundamental:

*All kingdoms have a law given;*

*And there are many kingdoms; for there is no kingdom in which there is no space, either a greater or a lesser kingdom*

*And unto every kingdom is given a law; and unto every law there are certain bounds also and conditions. [D&C 88:36-38].*

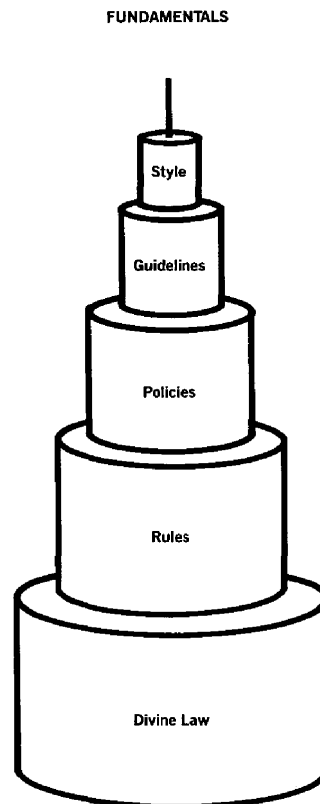


FIGURE  
1

The second fundamental principle is also basic to success. It is the circle of *RULES*. This ring includes the laws of man that can be made and also changed by human endeavor. In the Church, we are subject to rules written in the *General Handbook of Instructions*. Not only do we obey our own church rules, but we heed those of the society in which we live. We charge our members to be "subject to kings, presidents, rulers, and magistrates," and to obey, honor, and sustain the law (12th Article of Faith).

Government by law—both in word and practice—is the strength and bulwark of any democracy. No

individual is to be above or below the law. This circle of rules must be added to the fundamentals upon which we build our lives. Of course, this will be the circle of your special interest as you shape, honor, and defend such laws of society for the benefit of all.

The next fundamental principle is that of *POLICIES*. Policies are established, for example, by governing boards and presidential bodies who may also change those policies. In the Church, we believe in continuing revelation to presiding leaders who have been given authority and responsibility. The men you sustain as prophets, seers, and revelators respond to inspiration from Him who said, "Whether by mine own voice or by the voice of my servants, it is the same" (D&C 1:38).

Next, consider the importance of *GUIDELINES*. Guidelines can be written to help those at work, at school, at home, or at church. I know a man who really understands guidelines. He assists the General Authorities by studying all proposals to purchase or improve real property for the Church. I asked him once how he was able to formulate so many important recommendations he must make to the Brethren. He simply replied, "I work within my guidelines."

If we examine these rings from another perspective, perhaps we can see what he meant. He establishes guidelines well within the circle of policies set by the Brethren. They, in turn, function within rules of the Church and civil government. And those rules are well within



bounds set by divine law.

Now let us discuss the final fundamental—that of *STYLE*. This circle includes personality, determination, and spirit. A scripture uniquely applies to personal style:

*He that is compelled in all things, the same is a slothful and not a wise servant. . .*

*Men should be anxiously engaged in a good cause, and do many things of their own free will, and bring to pass much righteousness;*

*For the power is in them, wherein they are agents unto themselves.* [D&C 58:26–28.]

(See Figure 1)

As we crown this stack with the ring of *STYLE*, note the importance of the central rod that is firmly attached to the basic ring of *DIVINE LAW*. This tie-rod may be likened to the scriptural term, “the iron rod.”

Variations in personal style should range within established guidelines, implemented policies, official rules, and divine law.

When properly stacked, these rings resemble a pyramid in shape. If our behavior is centered in Christ, and the iron rod attaches us firmly at any level of our activity to the fundamentals of God’s commandments and things of eternal worth, then we won’t so likely be tipped over by winds of adversity.

The heaviest weight in the pyramid is on the bottom. That gives great stability. In a way, it is similar to the heavy ballast in the bottom of an ocean liner, placed there so the ship won’t be blown over in a storm.

Periodically we learn of

#### INDIVIDUAL INITIATIVE

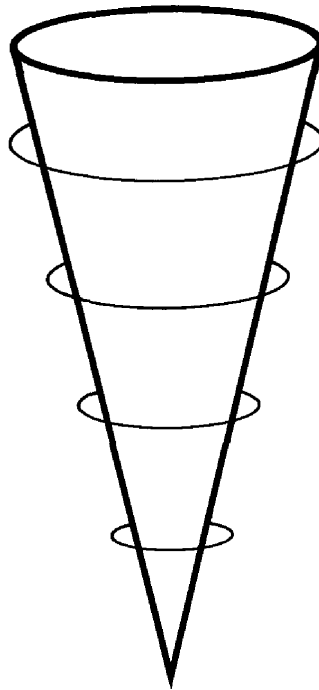


FIGURE  
2

individuals who are either not well anchored or obsessed with a particular idea that extends beyond the limits imposed by guidelines, policies, rules, or even divine law. Such a style may be portrayed as eccentric. This is an unstable situation that leads to wobbly imbalance.

Having considered the fundamentals, let us turn our attention now to the ideas alluded to in the second half of my title—individual initiative. This topic relates to one’s freedom to act as a citizen in society or as a responsible member of the Church. The image of the cone of individual initiative takes the

inverted shape of the pyramidal cone of fundamentals, which we have just discussed. It is shaped more like a top.

(See Figure 2)

Let me explain. As individuals, we have no latitude to break the commandments of God. They are absolutes for our conduct. “Thou shalt not commit adultery,” for example, is an irrevocable commandment and part of *DIVINE LAW*.

There is a little more room for initiative under the *RULES* by which we live. Handbooks can be edited, new statutes can be passed, even a constitution

can be amended.

New *POLICIES* can be even more easily established—but only by those who formulated them in the first place.

*GUIDELINES* give even greater freedom for adaptation to particular circumstances.

The zone of greatest individual initiative is in the ring of *style*. We previously referred to the word of the Lord that “he that is compelled in all things, the same is a slothful and not a wise servant” (D&C 58:26). So we are expected to exercise much individual initiative.

With this cone of individual initiative put in motion, imagine our rapidly rotating this cone to resemble a spinning top or a whirling gyroscope. A top spins well on a sturdy pivot-point. It also spins well only if there is no lopsided projection to deform its shape.

In our model, the laws of physics dictate that the forces generated by the spin provide lift in both outward and upward directions.

To me, this teaches a lesson. If individual initiatives are free from abrasive burrs and well based on a firm foundation, there is great potential for personal spiritual growth.

The Lord said, “What manner of men ought ye to be? . . . Even as I am” (3 Nephi 27:27). How can one’s personal progress approach that of the Lord’s hopes for us? It is by exercising individual initiative upwards and outwards, while remaining within the limits of the fundamental bounds and conditions we have discussed.

So much for the theory. This strategy can be applied to the lives of real people.

Let me illustrate with a specific example. In the March 3, 1990 issue of the *Church News*, there was a report of the official recognition of the Church by the government of Czechoslovakia. A photograph showed Elder Hans B. Ringger and me meeting with Dr. Josef Hromadka, Deputy Prime Minister of that country. The fourth person in that picture was Jiri Snederfler, district president of the Church in Czechoslovakia. The accompanying account was truly historic! But another unpublished story preceded that story reported by the media.

As general authorities of the Church, we have been petitioning for official recognition in Czechoslovakia for several years. When Elder Ringger and I met with the minister of Religious Affairs of the country for the first time, we asked him what must be done to gain official recognition that would allow members of the Church in Czechoslovakia to meet in dignity and in full compliance with the law. He replied, "First, you will have to submit statutes indicating your religious beliefs. And they must be submitted not by you 'foreigners,' but by members of your Church here in Czechoslovakia. One of those members must be willing to meet with us and submit those statutes in person. Following that, we will consider your request."

Bear in mind that at this time, some citizens of Czechoslovakia were incarcerated in jail for expression of religious belief or dissident thought. You all know that the new president of the Czechoslovakian

Republic, Vaclav Havel, shortly before he became president, was among those prisoners. Not only that, but for nearly four decades, our faithful Latter-day Saints had met quietly only in their homes.

After our meeting with the Minister of Religious Affairs, Elder Ringger and I conferred privately with our district president and his wife, Olga. We explained what was required. Then we asked him, "Are you willing to expose yourself as a member of The Church of Jesus Christ of Latter-day Saints? Are you willing to take the risk, knowing that it might mean jail or death if you were to identify yourself as the leader of the Church in this country?" We assured him that as his ecclesiastical authorities, we could not and would not make that request of him. We could only ask him to determine what his conscience would allow him to do

Bravely he replied, "Of course I will do it! I will reveal myself. I will meet with the magistrate. I will take the statutes to him personally. I will submit myself to his mercy." Then he concluded, "I will take whatever risk is necessary and even pay with my life, if needed, for the cause of the Lord and his Church because I know the gospel is true!" His wife gave her approval as tears of love moistened her eyes.

God bless Brother and Sister Snederfler for their courage. They are the unsung heroes in the drama that made this significant announcement possible. Because of them, the Church will enter a new era of growth in Czechoslovakia. A mission

will be reestablished there in July 1990 after an absence of forty years.

Brother and Sister Snederfler are noble examples of individual initiative balanced on fundamentals. They have been magnified and made great in the eyes of God and their fellowmen.

Valiant action occasionally entails risk. One's reputation, one's very life may be put on the line. Modern scripture suggests that this may be required of each of us. In speaking of our day when the Lord would come to make up his jewels, He spoke of the trials to which his Saints may be subjected:

*They must needs be chastened and tried, even as Abraham, who was commanded to offer up his only son.*

*For all those who will not endure chastening, but deny me, cannot be sanctified.*  
[D&C 101:4-5]

In a way, every leader in the Church has to endure trials. Every stake president, bishop, elders quorum president, and teacher has similar and challenging opportunities for individual initiative. When balanced in motion and upon sound fundamental principles, deeds of greatness can result.

Your legal training will require your becoming experts in the letter of the law. You will become craftsmen with words of the English language. But even more challenging will be your ability to master the spirit of the law.

The spirit is all important. President Benson often tells us that the most important thing about our work in the Church

is the spirit.

A similar expression was uniquely voiced last month by Dr. Hromadka, Deputy Prime Minister of the Republic of Czechoslovakia. We conversed with him about the challenges faced by a new government in a land where so much is needed. We asked if we, as members of The Church of Jesus Christ of Latter-day Saints, could be of any help to his people. He knew that our Church is well recognized for its efforts in providing humanitarian relief throughout the world. We shall never forget his reply. He said, "We don't need material goods or technology. We need a new spirit. We need moral values. We need the Judeo-Christian ethic back in our curriculum. Please help us to make this a time of spiritual renewal for our nation!"

The new president of Czechoslovakia, Vaclav Havel, won the admiration of his audience when he addressed a joint session of the United States Congress. He did not hold an empty hat in hand. He asked only for spiritual assistance, not just for himself, but also for his neighbor.

This man, who had been unjustly imprisoned for so long and could have felt unkindly toward his captors, said, "I cannot hate; I will not hate." As he spoke to the combined assembly of the United States Congress, he made this impassioned plea for spiritual help:

*The worst thing is that we are living in a decayed moral environment. We have become morally ill, because we have become accustomed to saying one thing and thinking another. We have learned not to believe in anything, not to*

*have consideration for one another, and only to look after ourselves. Notions such as love, friendship, compassion, humility, and forgiveness have lost their depth and dimension, and for many of us they represent merely a psychological idiosyncrasy, or appear to be some kind of stray relic, something rather comical in the era of computers and space rockets.*

What a marvelous message! President Havel's hopes for love, friendship, compassion, humility, and forgiveness harken right back to counsel given through the ages by living prophets of God. They have stressed the importance of practicing those principles broadly and, especially, within the walls of our own homes

I am informed that about 50 percent of you students here tonight are married. And I suspect others may take that important step if your prospective mates are successful in catching you

May I offer a little advice that may be helpful in your domestic relationships? Be mindful that there is no guarantee of a long life here in mortality

The sporting world was shocked earlier this month. A 23-year-old basketball star, Hank Gathers, had just completed an "alley-oop" play with a spectacular slam dunk. He then headed up court with a big smile. Seconds later he collapsed and, in spite of prolonged efforts at resuscitation, he died.

While I don't presume to know any more about his particular clinical history than has been published in the papers, I do know this. So-called "skipped" heart

beats are common. We all experience them from time to time. Some of those are recorded on the electrocardiogram (ECG) as premature ventricular contractions, or PVCs. If one of those PVCs occurs precisely at the onset of the T wave of the ECG, the heart is especially prone to a fatal shift of its rhythm. A normal rhythm can suddenly switch to ventricular fibrillation—a random motion of muscle fibers—which is incompatible with life because the heart can no longer propel blood. It is my assumption that this is what happened to Hank Gathers. The same can happen, regardless of physical conditioning, to any of us at any time.

Every day of life is a precious gift from God. I sincerely believe these words of King Benjamin:

*If you should render all the thanks and praise which your whole soul has power to possess, to that God who has created you, and has kept and preserved you, . . .*

*If ye should serve him who has created you from the beginning, and is preserving you from day to day, by lending you breath, that ye may live and move and do according to your own will, and even supporting you from one moment to another—I say, if ye should serve him with all your whole souls yet ye would be unprofitable servants.*

*And behold, all that he requires of you is to keep his commandments; and he has promised you that if ye would keep his commandments ye should prosper in the land.* [Mosiah 2:20–22.]

That scripture teaches the importance of humility, gratitude, obedience, and

faith in promised blessings.

It reminds us how fortunate we are to be touched by the majestic spirit of Rex E. Lee, president of Brigham Young University. His example of courage and candor, fidelity and love, constitutes a model worthy of our emulation. He teaches us to keep our vision on the eternities ahead, yet to live and enjoy each day as if it were our last.

We can learn much from such courageous men and women of greatness. Though our eyes are fixed on distant goals, we do today's work today. We can pay our bills on the day we receive them. Today, we can really treat our neighbors as we would like to be treated. We can tell our partners of our love daily.

Occasionally I awaken in the night and tenderly run my fingers through the curly hair of the companion lying beside me. I'm so grateful for her. I suppose some of that gratitude stems from long periods of separation imposed upon us from time to time. How I missed her when I served in the Army on duty overseas! How I missed her when spending arduous nights rendering emergency surgical care at the hospital! And now those long and lonely nights must be endured again when I have assignments overseas for the Church.

Your spiritual self-evaluation is of great importance. Most of you will practice law on a fee-for-service basis. Collect that fee to enable you to serve others. Don't collect the fee as the reason for your service. And, occasionally, you will wish to render service without a fee. That is a great privilege—one of the

refreshing distinctions between a profession and a trade.

Your professional work is to support your family. Your family does not exist to support your work.

Your profession will necessarily bring you into contact with the corrupted, which can be corrupting in itself. Your own spiritual strength must be your safeguard.

A society with no other scale than a legal one is not worthy of sons and daughters of God. Any morality based solely on the letter of the law falls short of the great potential of the human soul.

So I plead for a proper balance between fundamentals and initiatives. Actions based on eternal principles enlarge the soul. Through such actions we literally can become more like the Lord. We need not be boastful, but we can literally achieve the goal Jesus Christ expressed for us: "What manner of men ought ye to be?" he asked. Then he answered his own question: "Even as I am" (3 Nephi 27:27). As we so build we will be exhilarated, enlarged, ennobled, and magnified beyond our fondest dreams.

Please know of our deep love for you and of our great confidence in you. Our prayers are with you and your loved ones for your success now and always. I invoke the blessings of the Lord upon you as I testify that God lives, that Jesus is the Christ, that his restored church provides the pathway by which we can achieve balanced growth in this life and eternal glory in the life to come. In the name of Jesus Christ, Amen.





# CHRIST & THE CODE

THE DILEMMA  
OF THE  
CHRISTIAN ATTORNEY

JOSEPH G. ALLEGRETTI

Professor of Law and Assistant Director of the  
Center for Health Policy and Ethics, Creighton University

As a professor of law at Creighton from 1979–1986, I had a particular interest in questions of legal ethics and the legal profession. In 1986 I left Creighton to pursue a degree in theology. My decision to go to divinity school reminds me of a law school story that has been making the rounds for years. Once there was a first-year student who had to deal with a pompous and overbearing professor. One day she was called upon, and after the usual amount of pressure and pain, she succeeded in stating the holding of the case. As she finished she blurted out, "But it's just not right!" To which the professor responded, coolly, "Listen if you want to study what's right, you should have gone to divinity school."

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ILLUSTRATION BY DOUG HEMES

I seem to have taken that advice rather literally, for I've been at divinity school thinking about questions of right and wrong, good and bad. I've been struggling to make sense of how religion does (and should) shape our approaches to questions of personal and social ethics—more to the point, how religion intersects with law, public policy, and the work of the lawyer. I present here a theological perspective on the ethics and role of the lawyer. Although I write as a Christian, I hope my thoughts will prove useful to any lawyer who is seeking to ground issues of professional ethics within a larger and more encompassing frame of meaning. Here I take my cue from the Supreme Court. When the Court was faced with the delicate question of how to define religion, it held that a belief in a personal God was not necessary. Relying on the distinguished theologian Paul Tillich, the Court concluded that your religion is whatever is of ultimate concern to you, whatever occupies a place in your life parallel to the belief in God. In this broadly functional sense, most if not all of us are religious, and therefore I urge you to translate my thoughts into the language of your own faith/tradition.

I've entitled this article "Christ and the Code: The Dilemma of the Christian Attorney." You may have caught the faint echo of a classic work of modern theology, H. Richard Niebuhr's *Christ and Culture* (N.Y.: Harper & Row, 1951). The allusion is not accidental. Niebuhr identified and evaluated a number of typical approaches that Christians

have taken towards the larger culture, ranging all the way from the absolute rejection of secular culture in the name of Christ, to the whole-hearted embrace of secular culture on behalf of Christ. I intend to adapt Niebuhr's topology and examine a number of approaches open to the Christian attorney as she seeks to balance her loyalty to God with her professional obligations to courts, clients, and the public. How

Zealousness and Nonaccountability. First, the lawyer is the zealous partisan of her client. Her client is her only master, and she must do all that she can to achieve her client's lawful objectives, despite any doubts she may have about the moral or social merits of the client's cause. Second, the lawyer is neither professionally nor morally responsible for the means she uses, or the ends she achieves, as long as she stays within the

of the wide variety of options we confront.

Let me begin, then, with an adaptation of Niebuhr's first model, what he called "Christ against culture." The First Letter of John is a good example of this type. It views the world as a place of evil which the Christian must avoid. Secular society is rejected for the sake of Christ. This approach to culture has had a long and honorable history in Christian practice and belief. According to Niebuhr, it is represented in some strands of monasticism, in groups like the Mennonites, and in thinkers like Tertullian and Leo Tolstoy.

When applied to the legal profession, the analogous model might be termed "Christ against the Code." Let me illustrate it with a story I'd been in divinity school only a few weeks when I met another student who was also a lawyer. She told me that she had quit the practice of law because she could not square it with her Christian beliefs. She had grown tired of being a hired gun whose job was to help clients avoid their moral obligations. "I couldn't be both a lawyer and a Christian," she told me. She even had Biblical support for her view, in I Corinthians 6, where Paul expresses his dismay that Christians are bringing lawsuits against each other. Christians should not bring each other before pagan courts, writes Paul. They should suffer wrong rather than seek a legal remedy.

There are other ways to read this passage, of course, in light of the particular pastoral problems confronting Paul at Corinth.<sup>2</sup> Few of us would adopt this student's reading, and few if

IT'S NO SURPRISE  
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THAT IF A LAWYER  
ARGUES POSITIONS THAT  
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TIME THOSE VALUES  
WILL CHANGE.

is she to render to Christ what is Christ's, and to the Code what is the Code's?

I use the word Code as a shorthand to signify the basic principles of professional ethics that govern the attorney's work in our legal system. We need not examine in detail the provisions of the Code of Professional Responsibility, or the more recent Model Rules, for despite their differences they express a common vision of legal ethics. Each embodies what I will call the standard paradigm of the lawyer's role.<sup>1</sup>

The standard paradigm is marked by two principles:

boundaries of the law and the profession's own rules. The principle of nonaccountability is meant to insulate the attorney from moral scrutiny for her actions.

I intend to present several models or types that represent alternatives open to the attorney as she seeks to balance her obligations to God with her professional responsibilities as expressed in this standard paradigm. Like all models, mine will sacrifice some accuracy for greater clarity. I present them not as rigid categories, but as a way to help orient us and to give us some sense

any of us would consider the practice of law off-limits for Christians. Nevertheless, my story illustrates one model of the appropriate relation between Christ and the Code. This model insists bluntly that a Christian cannot be a lawyer. Between Christ and the Code is a gulf that cannot be bridged. In its more moderate form, this model motivates those who seek to establish Christian tribunals, divorced from the normal legal process, where Christians can bring their disputes with each other for mediation and fraternal correction.

Although I cannot comment in detail on the strengths and weaknesses of this model, certainly we can respect its single-minded devotion to following Christ. At the same time, such a view runs the risk of forgetting that sin resides not just in social structures, but in the human heart as well, and that God is at work redeeming not only individuals but all of creation. It forgets that Christ came to reconcile all things to God, and that Christians are called to follow Him into the world and to make disciples of all nations. Still, even for those of us who do not hold to this model, it can serve as a cautionary note. Have we been too quick to accommodate our religious beliefs to the dictates of our culture and our Codes? Have we sold out? Have we bought in?

This leads me to a second model. Niebuhr talks of the "Christ of culture." In this view, there is no tension at all between the Gospel and the world. Instead, Christian values are thought to be identical with the

highest values of civilization. In the life and teaching of Jesus, we see the goal towards which the world is moving. This model too has had a long and respected history in Christian thought. Perhaps it reached its culmination in 19th century liberal Protestantism, which so often saw Jesus as a Victorian gentleman who came preaching liberty, tolerance, and evolutionary optimism. The values of democratic society were

providing a moral justification for the standard paradigm. The justification typically takes one of two forms. Sometimes, ethical scrutiny is shifted away from what the lawyer does and onto the adversary system as a whole. The claim is made that the adversary system is the most effective means available to determine truth, or achieve justice, or protect individual rights. So, for example, it is said that in the event of a dispute

accountability for their actions, or else they will be tempted to reduce their commitment to their clients, thus undercutting the basic assumptions of the adversary system.

A second approach justifies the standard paradigm in deontological terms. There is a personal relationship—a covenant, we might say—between lawyer and client. This relationship engenders duties of fidelity, confidentiality, and assistance. This explains why the attorney acts on behalf of the client alone. What she does for her client is good and right in and of itself, regardless of the consequences that ensue.

I'm not interested today in a critique of these two arguments. Suffice it to say that both have come under searching criticism in recent years. For our purposes, the important point is that under either view attorneys are said to act morally as long as they abide by the standard paradigm of legal ethics. And so it seems to many to raise no ethical problem if a lawyer makes an honest witness look like a liar, or reveals only that portion of the truth favorable to her client, or defends what she knows to be an unjust cause. What the Code says you can do, you can do, and what the Code says you must do, you must do.

It is this understanding that underlies the model of "Christ in harmony with the Code." There is no tension between Christian values and professional life, because the practice of law serves noble ends or is noble in and of itself. By fulfilling the role set for her by the adversary system, the attorney can be confident that

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equated with the core of the gospel message.

As applied to the legal profession, we might call the analogous model "Christ in harmony with the Code." Its adherents see no conflict between their work as lawyers and their lives as Christians. When lawyers act in accordance with the standard paradigm, they not only avoid legal trouble, but they act in a manner that is fundamentally right. The Code itself embodies a morally appropriate vision of the lawyer's role.

Those who hold this view are committed to

between two parties, the truth can best be arrived at if there is a neutral decision maker and if the parties are given the task of presenting their own positions as forcefully as they can while challenging the presentations of their opponents. In the clash of truths, Truth will emerge. In this view, the standard paradigm is seen as necessary for the effective operation of the adversary system. The system will work only if lawyers have the responsibility to act zealously and single-mindedly for their client's cause. And attorneys must be freed from moral

she is doing what is good and right in the eyes of God

This model has its own strengths. For one thing, it reminds us that the world is the arena in which God's kingdom is being realized. It recognizes that God is at work in institutions as well as in individuals. At the same time, it gives rise to a risk that whatever is acceptable to the wider culture will be seen somehow as God's will. As Niebuhr put it, loyalty to culture takes precedence over loyalty to God, and Christian values cease to serve as a check upon the idolatrous aspirations of culture.

There are risks for the lawyer in such a model as well. It can lead the lawyer to abdicate moral responsibility for her actions, which in turn can lead to the collapse of her moral universe. I suspect that it is society's recognition of this moral abdication which leads to so much of the criticism levied at the legal profession, the scathing attacks on lawyers as prostitutes or hired guns.

Maybe this is what led Carl Sandburg to ask, "Why does a hearse horse snicker hauling a lawyer away?" Or a Medieval poet to pen the immortal lines, "St. Ives was a lawyer and not a thief, a thing almost beyond belief."

The cynics and the skeptics might assume that all lawyers fit this model. But in my experience, many attorneys are aware of the unavoidable tension between Christ and the Code. They want to be both a good person and a good lawyer, and they realize that the two may not be identical. I suggest that once an attorney begins to reflect

upon the problem of serving two masters, she no longer fits within this model. Instead, we need to consider a third model, based upon what Niebuhr called "Christ and culture in paradox."

Our third model stands between the first two. The first, remember, rejects the secular world as incompatible with Christian values. The second accepts the secular world as embodying Christian values. Our third model avoids this



"either/or" for a "both/and" approach. Like the first model, it admits that all human culture is sinful and to be involved with it leads to sin. Like the second, it insists that our sinful world is sustained and redeemed by a loving God.

Christian theologians who favor this model are fond of paradoxical language. They juxtapose law and grace, God's wrath and mercy. They talk of the person as simultaneously a saint and a sinner. We see these moves in Augustine at times, in Martin Luther, and more recently in Reinhold Niebuhr. Christians

inhabit two worlds, a private realm in which they relate to God as individuals and are bound by the teachings of Christ, and a public realm where they live and work and must make accommodations to the sinfulness of the human condition. Christ and culture are in conflict, yet each must be obeyed. Hence, the Christian is subject to two moralities, and must live precariously, sinfully, with no way out of the impasse on this

side of history.

So Luther speaks quite eloquently of the Christian duty to obey the Sermon on the Mount. Don't resist evil, turn the other cheek. Yet he can say that as members of the state, Christians are to serve the state and must at times be willing to take up the sword and kill.

This model has its own advantages. It is bluntly honest about the moral ambiguities, the interwoven joys and tragedies of everyday life. It captures the central insight of the Reformers that nothing we do can make us right with God. That's the whole point!

While we were yet sinners, Christ died for us and reconciled us to God.

As applied to the legal profession, we might call the analogous model "Christ in tension with the Code." Here the attorney admits that sometimes she does things that a nonlawyer should not do. She admits that ordinary morality would sometimes condemn her actions. She argues, however, that everyday morality is not applicable to her professional life. Her professional obligations give rise to a unique set of concerns. As an agent of the client, she should be judged solely by the rules of legal ethics embodied in the Code. According to Richard Wasserstrom, the result is that the lawyer becomes, in essence, an "amoral technician," who inhabits a moral world far simpler and less ambiguous than the moral world of everyday life. It becomes easy to turn aside difficult questions with the reply, "That's not my concern. My job is not to second-guess my client, but to achieve my client's interests."<sup>3</sup>

As in our second model, we can note the appeal to the principles of zealousness and nonaccountability. The lawyer in the second model has no doubts that a good lawyer can be a good Christian, while the lawyer in the third model hopes that both are possible, fears that both are not, and knows no way out of the dilemma. The result can be a kind of moral schizophrenia. The attorney compartmentalizes her life. She separates the public from the private and concludes that her Christian values apply only to the private. In her professional life she insists that she be



judged only by the rules of the profession.

Here there is a denial of moral agency, a form of bad faith. When challenged to justify her actions, the attorney doesn't respond, "I chose to do this and I take responsibility for my choice." Instead, she distances herself from her action by shifting to the third person language of role. This is what lawyers do. "This is what the system demands." Such a situation is inherently unstable. Something has to give, and it's no surprise that studies of the legal profession indicate that if a lawyer argues positions that conflict with her personal values, over time those values will change. Taken to an extreme, the role can absorb the personality. Consider, for example, the distressing gravestone eyed in a Scottish cemetery: Here lies John McDonald, born a man, died a grocer.

As a final model, Niebuhr speaks of "Christ transforming culture." In some ways this resembles our third type. It too realizes that culture is sinful, yet acknowledges that Christians have obligations to culture. But unlike the third type, this model claims that the Christian need not be immobilized between the demands of Christ and the demands of culture. The Christian is one under the power of Christ, and Christ is the one who redirects and reinvigorates our world. The gospel is seen as penetrating all of life, converting both people and institutions. This model is exemplified in Christian theology by thinkers like Augustine and John Calvin. Although Niebuhr doesn't make the

point, I suggest that the model has strong Biblical warrant as well. Jesus teaches that the kingdom of God has arrived. It is present, in our midst, growing like a mustard seed, penetrating all of life. It is here, but it is not yet fully realized.

Lawyers who hold an analogous view fit the model that I will call "Christ transforming the Code." This talk of transformation can be difficult



Critics of Niebuhr have long commented on the slipperiness of terms like transformation and conversion. What does it mean to say that Christ is at work transforming culture? What counts as evidence? And how would this apply to the work of lawyers?

Despite these difficulties, at the very least this model asserts that Christ is the Lord of all, even the legal profession, and that Christians are called to serve Him in their lives, even their professional lives. Moreover, this model has the great advantage of rejecting the artificial separation of life

into private and public realms, with religion relegated only to the private. The Christian attorney is to bring her values into the workplace, with the hope and trust that these values might revitalize and transform her relationships and the profession itself. The lawyer is not a hired gun, nor an amoral technician. She cannot avoid moral responsibility for her actions by appealing to professional rules and roles. She is a

moral agent, whose actions have moral consequences for which she is responsible, not just to herself and to others, but ultimately to God.

I suppose that Thomas More could be called the patron saint of this model. More was willing to give up much for his King and his career, but not at the cost of his soul. As he explains in the play *A Man for All Seasons*, "But there's a little . . . little area . . . where I must rule myself."<sup>4</sup> Why this obstinance? Because, says More, "God is love right through, and that's my true self." More's religious

convictions gave him the courage to draw a line, to step outside of his professional role and to declare that his beliefs in a loving God would let him go this far, but no further.

This model is unfamiliar to most attorneys. Its scope is unclear, its implications uncertain. It seems to threaten traditional attorney-client relations. Let me try to advance the discussion by briefly sketching three avenues for reflection. Each is an attempt to make real the goal of a legal profession transformed by the saving power of Christ.

First, I suggest that we need to take a fresh look at the concept of vocation. A profession is what one professes to be, but a vocation is what one is called to be, what God calls me to be. Luther and Calvin were aware that any occupation can be a calling if its primary motive is to serve God and neighbor. In an insightful article, Charles Kammer has argued that the concept of vocation can serve as a check upon the tendency of professionals like doctors and lawyers to prefer their own self-interest to the public good.<sup>5</sup> According to Kammer, a profession that understands itself as a vocation "can escape many of the problems generated by . . . narrow self-interest because it is governed by a higher vision of the purposes the profession is intended to serve." As the professional is liberated from self-interest, she is set free to serve others. Work becomes an avenue of discipleship to Christ. "Our vocation becomes that of loving our neighbor through our occupation."

Several questions come

to mind. Does it make sense to talk of a lawyer's vocation? In what ways can a lawyer's work be a vehicle of service to God and neighbor? More concretely, how would viewing law as a vocation affect the attorney's relationships to clients, courts, and adversaries? What would be the impact on the standard paradigm of legal ethics and the principles of zealotry and nonaccountability?

A second approach would be to focus on the traditional Biblical notions of priest and prophet. Max Weber defined the priest as a specialist in the cultic enterprise, and sociologists have been quick to point out that the legal system plays a cultic role in society. It is the mechanism by which society resolves conflicts that threaten the social fabric. It has its own myths and rituals, its own language, its own garb. To the layperson, the legal system is the mysterious dispenser of blind justice. In the "Temple" of the law, lawyers and judges are its priests.

Yet we know from Scripture—from Jeremiah, Ezekiel, and Jesus—that priests can also be prophets. Lawyering can be seen not only as a priestly profession but as an avenue for prophetic ministry.

A prophet interprets the signs of the time in the light of faith, and speaks God's word for that time and place. The prophet criticizes people and institutions, but not as an outsider. The prophet stands with the sinful as one of the sinful, confronting the terrible majesty of God's justice, yet at the same time the prophet holds out a vision of God's mercy and faithfulness and of the new life possible on

the other side of judgment. The task of the prophet is to bring "to expression the new realities against the more visible ones of the old order."<sup>6</sup> The prophet offers an alternative vision of reality based upon God's freedom and God's will for justice.<sup>7</sup>

What would it mean to claim a prophetic role for lawyers? What is the alternative perception of reality to which they might point?

Legal rights without the means to enforce them are a sham.

By and large, and with some notable exceptions, lawyers in America have served as defenders of wealth, power, and entrenched privilege. An appreciation of their prophetic role would spark a new concern for the weak and the poor, those who have little voice in today's system. It would lead lawyers to question the

they achieve or the means they employ. The prophetic dimension raises disturbing questions about the social and personal costs of the principles of zealotry and nonaccountability.

A prophetic role for Christian attorneys would build upon the rich legacy of the Hebrew prophets. Amos and Isaiah and the rest refuse to separate worship of God from the duty to help those who cannot help themselves. They attack all who trample the poor, turn aside the needy, exploit the weak, and corrupt the legal process. Indeed, the plea of Isaiah could almost serve as credo for the Christian attorney: "Make justice your aim; redress the wronged, hear the orphan's plea, defend the widow." (1:17). Jeremiah puts it succinctly: To know God is to do justice to the poor and needy (22:15-16).

Finally, we might follow the lead of Thomas Shaffer and begin to explore a vision of lawyering which puts the stress less on the dictates of role and more on the duty to care.<sup>8</sup> The conventional wisdom too often views lawyers as possessing only two options when they have moral qualms about their client's case. The lawyer must do everything she can to win for her client—or she can quit! This view of the lawyer-client relationship assumes that lawyers and clients are morally isolated from each other. They do not influence each other. Neither is open to change.

On the contrary, an ethic of care recognizes that lawyers and clients are not morally autonomous. They are not islands unto themselves. As they come together they become

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First and foremost, the acceptance of a prophetic role would mean a new commitment by lawyers to the just distribution of legal services. Today in America the poor have little access to legal counsel, and the middle-class is finding it increasingly difficult to afford legal assistance. As long as legal representation is a commodity to be purchased like any other, those who can afford lawyers have them, and those who cannot are left without the means to assert their legal rights. As the old law school adage goes, a right without a remedy is no right at all.

prevailing assumption that *pro bono* work is a deed of charity rather than a duty of justice.

Furthermore, the prophetic role shines a new light on the ethical problems that lawyers confront in their daily practice. A heightened sense of social justice, for example, would force attorneys to reexamine their cherished commitment to the standard paradigm. Perhaps unqualified loyalty to the client produces injustice and social harm. Perhaps attorneys should no longer be immune from moral criticism for the ends

mutually dependent. In their dependence each is open to change. Conversion is possible. What Buber called the I-Thou relation can emerge. Openness and risk and vulnerability characterize such a relationship.

The recognition of an ethic of care would produce an epochal shift in lawyering, away from the amoral provision of technical assistance, towards service to the client as a person. Shaffer writes:

*The broader professional consequences could be revolutionary: Lawyers would have to become morally attentive, attending, that is, to the persons of their clients as much as to the problems clients bring to them. Law students would come to insist on education which trains them in the skills of sincerity, congruence, and acceptance. Every level of the legal enterprise would come again to think of moral development as part of its task, all toward a professional ethic of receiving as well as giving—of unfurling, rather than imposing, to use Buber's phrase.*

Such an ethic rests ultimately upon the conviction that God is at work in human relationships, and therefore all things are possible. God is the invisible third party in all human encounters.

Again, we need to consider the implications of such a view for traditional attorney-client relationships. Would an ethic of care intrude upon client autonomy? How would it inform the attorney's approach to particular ethical duties like confidentiality? Would attorneys who adopted an ethic of care become more or less committed to the

principles of zealousness and nonaccountability? Is an ethic of care even possible? Perhaps an attorney can have a relationship of openness and vulnerability with a flesh-and-blood client, but what about the attorney who represents a corporation, a union, a pension board?

An ethic of care is tentative and open-ended. It provides no definitive answers to ethical questions because only in the give-and-take of



the relationship can the morally responsible course of action be discerned. Nevertheless, the ethic of care deserves further exploration by those who are concerned to integrate the personal values and professional life of the attorney. What is it really but an attempt to bring the force of the Gospel message to bear upon the lawyer-client relationship? Perhaps here is the seed of a new conception of the Christian lawyer, not a hired gun anymore, but (dare I say it?) a minister to her clients.

These are just a few of the ways in which Christian

attorneys could begin to explore the model of "Christ transforming the Code." My guess is that such a model will lead to some surprising results. At times we may find ourselves less committed to the single-minded pursuit of our client's interests, while at times we may find ourselves more deeply committed to the client than ever before. For example, maybe the hard question is not, "How can an attorney

we are serious about the transformation of ourselves and our profession, then we can hardly avoid these little dyings, for we know that there is no growth without change, no conversion without repentance, and no Easter Sunday without Good Friday.

#### Notes

1 Two articles which discuss the standard paradigm of legal ethics are M. Schwartz, "The Professionalism and Accountability of Lawyers," 66 Cal L Rev 669 (1978), and G. Postema, "Moral Responsibility in Professional Ethics," 66 NYU L Rev 63 (1980). I am indebted to both.

2 For the modern historical reading of I Corinthians 6, see C. K. Barrett, *A Commentary on the 1st Epistle to the Corinthians* 134-143 (1968); W. Orr and J. Walther, *I Corinthians* 193-199 (1976).

3 R. Wasserstrom, "Lawyers as Professionals: Some Moral Issues," 6 *Human Rights* 1 (1975).

4 R. Bolt, *A Man for All Seasons* (1962) 34. The subsequent quotation is from Bolt, at 70.

5 Kammer, "Vocation and the Professions," in T. Ogletree, ed., *The Annual of the Society of Christian Ethics* 151 (1981). The two subsequent quotations are from Kammer, at 174-175, and at 170.

6 W. Brueggemann, *The Prophetic Imagination* 23 (1978).

7 Brueggemann, at 110.

8 T. Shaffer, *On Being a Christian and a Lawyer* (1981). The subsequent quotation is from Shaffer, at 30. I am indebted to Shaffer for much of my discussion of the ethic of care.

9 Shaffer, at 56.

#### Dean's Note:

*The Clark Memorandum is interested in continuing the dialogue introduced by Professor Allegretti. If you would like to share your views in a letter to the editor or in an article, please write: 342 JRCB, Brigham Young University, Provo, Utah 84602.*

THE ONE thing that a lawyer (and any other human being) needs to do is continue to broaden his or her exposure to that which is delightful, good, and uplifting in this world, limiting, to the extent possible, the opposite. Perhaps you are acquainted with the statement, "God will hold us responsible for all the lovely things we did not enjoy in this world." (Ancient Jewish proverb, quoted by Rabbi Harold Kushner) So we need to enjoy lovely things I learned this from my mother. She was a very special, lovely person.

My father was a lawyer and a judge in Salt Lake City in days long ago He died early in his 46th year from peritonitis that he suffered while sitting on a murder case. He went home one evening quite sick, but had some relief during the night, so went back and finished the case. When he reached the hospital and they opened him, there was not a thing they could do—no medicine in that day. So my mother had to kneel by his bed and, in response to his plea, ask God to let him escape from pain that he felt he could no longer endure She did not want to do that. But she finally did, and he was released.

I watched my mother spend a lifetime holding us together, not with entreaty or admonition or tears or great emotion, but through her strong heart, her love for the Church, her faith, and her sense that we could do it. She had the ability to communicate to us that, if we stuck together, worked hard, lived simply, and came to understand that we are not here solely to serve our own purposes—if, in a sense, we followed the life of the Lord—we could make it.

Among the things she gave us was exposure to literature. One of the pieces of literature I read was Tennyson's *Idylls of the King*. Do you remember the story of Gareth and Lynette? Gareth was the last son of a family of knights and a lesser king and queen. His father had served as a knight and now was just a memory of a man, lying inert by the fireside, unable to function because of his wounds and illness and age. Some of his brothers were knights at Arthur's table and Gareth wanted to be a knight. He had a special agenda of his own. His mother tried to talk Gareth out of becoming a knight. She argued, in summary: Your father has all these estates. You are a prince. Why not just stay home and enjoy the "perks" of your fortunate birth and all this affluence? This was Gareth's response:

*Mother, why do you tether me to you? Man am I grown. A man's work must do . . . Follow the deer? Follow the king. Live pure. Speak truth. Right wrongs. Follow the king, else wherefore born?* [Alfred, Lord Tennyson, *Complete Poetical Works of Tennyson*, (Boston: Houghton Mifflin, 1898), p. 313]

As the adventure continued, Gareth prepared himself for that kind of a quest—a lifelong quest.

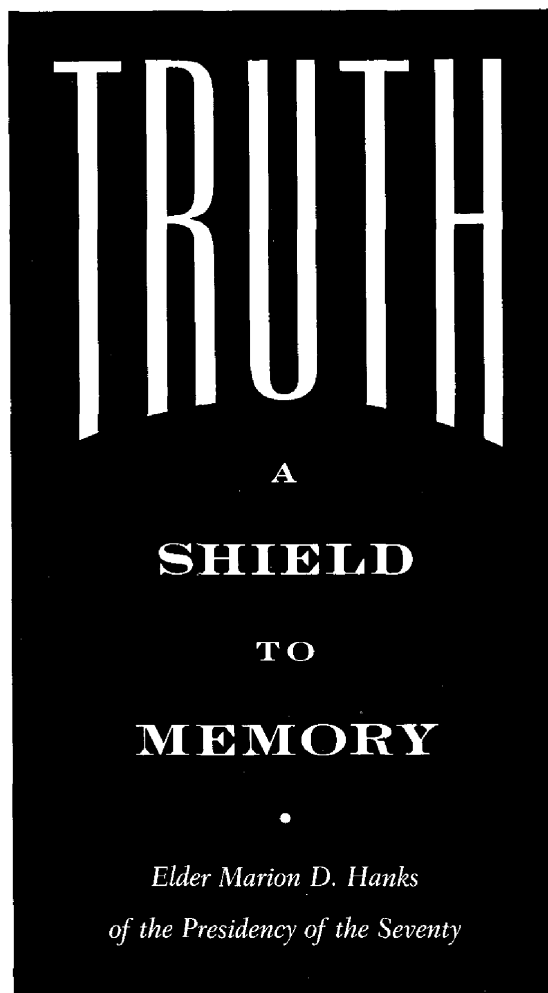
As we think of the profession you are preparing to enter, we are thinking about an honorable and elemental need in human society. We are thinking about a broad view of life, a philosophy of life, and a set of values that can carry us into conflicts with a knowledge of who we are and what we believe, values that will permit us to respond to the diversities of life with clarity—not easily, but with clarity. When we think of being people who can be described as living the pure life, of speaking the truth, and righting wrongs, we are describing the expectation that we hold, and society may hold, for those who practice or represent areas of the law.

#### Living Pure

I was in a Boy Scout meeting years ago in New York City when Thomas Watson, then chief executive officer and major owner of International Business Machines, finished his second term as president of the Boy Scouts of America. Thomas Watson later was ambassador to Russia; during World War II he was a decorated flyer; he had more millions than most of us have hundreds. He was born to it, and he had been married for 38 years to the same beautiful wife, who sat by him at that

meeting. He was one who was quietly committed to abstention from those enticements of society that often go with his station. Thomas Watson was a clean, decent, honorable, wonderful man, and I will not forget what his 8- or 10-minute valedictory was based on that night.

He said there were two nights in his life more important than any others. He mentioned only one. At age 12 he went to his first Scout meeting to learn how to become a Tenderfoot. He went, he said, in fear and trembling. He was the heir of great fortunes even then. He did not mention any of that, but just said, "I went to my first Scout meeting and there a Scoutmaster spoke to us about the pure life. It was one of the two



most important nights of my life." He did not speak longer or extenuate that idea—he just said it. And everybody there got the message. This is the kind of life that, while his money would buy him most things, had been the stable, strong, steady course for him. I saluted in my heart such a man.

In Doctrine and Covenants 100:16 we read that God will raise up for himself a pure people and, again, that we who represent him in any way should purify ourselves, purify our hearts, as we go into the fray. It is my honest conviction that unless we are willing to live the pure life, speak truth, and right wrongs—or undertake to do so—we are missing the foundation of what can be and is meant to be a wonderful and beautiful life.

There is a statement by Mr Churchill that I want to share with you. Let me read what he wrote about the way we live. It is, as Socrates said, not just any kind of an argument in which we engage—it is the argument of how a person shall live. And this is what Winston Churchill wrote and spoke in the House of Commons in 1940:

*History with its flickering lamp stumbles along the trail of the past, trying to reconstruct its scenes, revive its echoes, and kindle with pale gleams the passion of former days. What is the worth of all this? The only guide to man is his conscience; the only shield to his memory is the rectitude and sincerity of his actions. It is very imprudent to walk through life without this shield, because we are so often mocked by the failure of our hopes and the upsetting of our calculations; but with this shield, however the fates may play, we march always in the ranks of honor.*

I have on my office wall two framed pictures. One is of Sir Thomas More, the other of Abraham Lincoln—both great lawyers. And of Thomas More I have read considerably his quotations, his life, his response to Henry VIII's invitation to lose either his honor or his head. It was an easy decision for him—though not easy to carry out—for there was no other answer. He would surrender his life, his head to the guillotine, but never his honor. In the play *A Man for All Seasons*, which portrays the life of Sir Thomas More, there is this interesting little exchange:

Sir Thomas speaks of needing respect for his own soul, and Cromwell, furious, replies,

*A miserable thing, whatever you call it, that lives like a bat in a Sunday School! A shrill incessant pedagogue about all its own salvation—but nothing to say of your place in the State! Under the King! In a great native country!*

Conscience compared to that? More answers,

*Is it my place to say "good" to the State's sickness? Can I help my King by giving him lies when he asks for truth? Will you help England by populating her with liars? [Robert Bolt, *A Man for All Seasons*, (New York: Random House, 1960), p. 89]*

And to the common man, the commentator says,

*It isn't difficult to keep alive, friends—just don't make trouble—or if you must make trouble, make the sort of trouble that's expected. [Bolt, *A Man for All Seasons*, p. 95]*

There is before anyone who is in the practice of the law the absolute certainty of many difficult questions and the absolute assurance that, if we are committed clearly and early to the idea that there are some things that are wrong and some things that are right, we will make those decisions with correctness and integrity and the shield of memory and conscience that will permit us to live.

Now, at the cost of reading a little, I would like to share with you the testimony of Charles Malik. You know him as a great man and an internationally important statesman, who once served as general secretary of the United Nations. Pay as close attention as you can, because his words are meaningful and significant:

*There is truth, and there is falsehood. There is good, and there is evil. There is happiness, and there is misery. There is expansiveness, and there is self-withdrawal. There is freedom, and there is slavery.*

*There is that which ennobles, and there is that which demeans. There is that which conduces to strength and health, and there is that which conspires to weakness and disease. There is a climate of confidence and trust and peace, and there is when the spirit of contradiction and conflict hits you in the face. There is that which puts you in harmony with yourself, with others, with the universe, with God, and there is that which alienates you from yourself, from the world, and from God. There is that which makes you feel certain and confident, and there is that which insinuates doubt and uncertainty in your soul. There is that which makes you decisive, and there is that which causes you to waiver and equivocate. There is that which opens every pore of your existence to the whispers of being, and there is that which causes you to shut up like a clam. There is when you see God on the face of every man you come across, and there is when you pass men by without even noticing them.*

*There is when you want to dance and sing, and there is when you have no desire to move or look at anything. There is when you love children and old women and flowers and the drifting clouds and the raging waves, and even the rocks and stones; and there is when you hate everybody and everything—above all, yourself. There is real ecstatic mastery over every impulse in your being, and there is awful flabbiness whereby everything sweeps you away with it. There is life and fullness of being, and there is tending subtly, gradually toward nothingness and death.*

*These things are different and separate and totally distinguishable from one another. Truth is not the same as falsehood, happiness is not the same as misery. We will not be far wrong if we say the first elements of these 17 pairs all come from the living God, and the second elements all from the devil.*

*The greatest error in modern times is the confusion between these orders of being. Nothing is anything firm in itself—this is the great heresy of the modern world. But, there is no power on earth or in heaven that can make falsehood truth, evil good, misery happiness, slavery freedom.*

Then he talks about philosophers in the great centers who make it all a matter of definition. He finishes:

*How do we become true and good, happy and genuine, joyful and free? Never by magic, never by chance, never by sitting and waiting, but only by getting in touch with good, true, happy, genuine human*

*beings, only by seeking the company of the strong and the free, only by catching spontaneity and freedom from those who are themselves spontaneous and free*

And then Malik makes a promise about “the sharpness of perception” that will help us “differentiate unerringly between the true and the phony, between the beautiful and the hideous, the noble and the mean. You will also develop the ability to blush, the ability to cry and shed tears, the ability to repent, the ability to fall on your knees and pray, the ability to become a real moral human person.” He encourages the reading of the gospels and the Psalms regularly every day, meeting the deepest and purest saints, faithfully serving your church, and practicing the great art of mental and moral discipline. He says,

*I guarantee you two things: first, that you will experience in your own life and being a taste of what is beautiful and strong and certain and free; and second, you will develop such a sharpness of vision as to distinguish the true from the false whenever you come across them. And both your being and your vision will grant you some knowledge of God. [Charles Malik, “To Know the True from the False,” *Reader’s Digest*, August 1972, pp. 84–85 (taken from an address at Oakbrook, Illinois, 1971)]*

### Speaking Truth

Of speaking the truth, Sir Thomas More and Charles Malik are wonderful examples. There are others. A 13-year-old boy, after a nervous interlocutor approved his spelling of a word in the national finals, returned to his seat and thought it over. Then he went back, tapped the man on the shoulder, and said, “I think I spelled that word wrong, sir.” He had, and he lost. Not long ago, the United States golfer of the year marked his score card wrong and was not caught in the act—he did it totally inadvertently. But he thought it over, considered it carefully, and withdrew from a tournament he was leading, and, when somebody tried to congratulate him, just said, “Why you may as well congratulate me for not stealing somebody’s wallet or their automobile. It was a mistake, it was an error, and there are rules against it. There is no other answer than to acknowledge that I inadvertently made that mistake and pay the penalty.”

An outstanding all-American basketball player at BYU once came to talk to me about going on a mission. He said he would rather not go now, but there were those who told him that if he didn’t go now, he would never go. He was halfway in his college career. I asked, “What do you really want to do?”

He answered, “I want to finish, and then go on a mission.”

I said, “You know the risks—people have been honorable in trying to help you identify them. You will find a lovely girl—maybe you already have—and you will want to marry. You will probably have a contract to play in the NBA. You will have scholarships through the NCAA. You will have a lot tougher decision to make, so you had better think it over. As far as I am concerned, I would not tell you what to do. You decide. You pray enough and think enough and look ahead enough and, if you think you can make it and must have a mission, then you will make it. Other things will have to wait.”

I met him next when he was assistant to the president of a mission in New Zealand, after he had become all-American, received his \$1,000 NCAA scholarship, turned down a contract

in the NBA, and gone on a mission. I have never heard a missionary voluntarily selected from his peers and spoken of as that young man was, without my ever asking anybody, “What do you think of him?”

But I tell you this not for any of that. He was running an old 16MM movie machine. While he was showing the film, it somehow got caught and tore. The man who was conducting the meeting said something like, “We will just wait for you. Just go ahead, Elder. Those machines have a habit of doing that.”

He said, “Maybe they do, President, but, in fact, this was my mistake. I fed this wrong.” It was that simple. He didn’t have to say that for us; apparently he had to say that for himself. I could give you a hundred other incidents picked up around the earth of people who somehow speak the truth.

A boy was playing in the finals of a Church volleyball tournament in the Deseret Gym in Salt Lake. His dad was in a meeting at the university stake. He kept looking at his watch. I finally said to him, a little bit bemused, “President, where would you rather be than here?” Not knowing that he had been observed in his repeated references to his watch, he said, “Why, no place, Brother Hanks. I’m happy to be here.” I said, “C’mon. Something is going to happen in about 10 minutes. We’re going to be starting a meeting here. Where would you rather be?” He resisted a little and then said, “Well, to be honest, my two sons are playing in a volleyball championship at the Deseret Gym at seven and I’m kind of concerned.” I said, “Your sons are playing in a championship game and you’re here? What are you doing here?” He said, “You called the meeting.” I said, “For you, I ‘uncall’ the meeting. Go!” He said, “You mean it?” I said, “Look, we’ve got a lot of meetings tomorrow if you like meetings. Go, and be with your sons.”

He went. He spoke the next morning as a counselor in the stake presidency. He said, “We won last night.” He told the little story of our having sent him on his way—he wanted that heard. I believe with all my heart that there was one place more important than the other right then for him. Well, the story he told was of having won the previous night, but he said,

*That really isn’t what’s important. Last year my same two sons in the finals of the same tournament lost, and we’d been hoping that maybe what happened then would turn out happily in every way for the 15-year-old, who was responsible for his team losing.*

*The story in a word: two games each, the score 14–13, our serve. Our side served; they returned it. There were great digs and hard smashes at what looked like hills dug out of the pavement, until finally a big kid on this side jumped way over the net and hit that ball a hundred miles an hour right through the other team and out of bounds. The referee said, “Game. Match. Championship,” and all broke loose. Everybody in the stands was yelling and screaming, until the referee climbed down from the net, walked toward our side, and stopped in front of my 15-year-old son. When the sense of what was happening swept that place, it was as quiet as a tomb. The referee said incredulously to my son, “What did you say?” And he said, “Sir, the ball touched me.”*

*That meant before out of bounds; that meant no point, no game, no match, no championship. The referee climbed back up the ladder, tossed over the towel. We served; they served, made three points, and won it 16–14. Then it happened. I stood with his mother, who had been there watching this event. My son, 15 years old, had just cost*

his team the championship, when nobody knew that ball had touched him on its way out—only he knew. He stood there with his shoulders squared, his head hanging a little

The normal exultation of the winners was muted. The first man to my boy was his brother, a year older, who put his arms around him; then came the four other kids on our team, then those who were on the bench at the moment, and then the six guys playing on the other side of the net and their substitutes and coaches—all surrounding my two sons, with tears and quiet respect.

I am not exulting because of a won or lost ball game I had the honor to be the father of a son who at age 15 was that kind of a man.

And when I stood up I said, "President, if I were ever again a mission president, I'd sure love to see that boy coming" If I were ill and needed help and he had become a doctor, I'd know to whom I'd go with confidence. Or if he were to be a lawyer or a farmer or an insurance salesman—this boy would have it already figured out Speak true.

### Righting Wrong

Now let me just finish by noting that third remarkable element in Gareth's projection for his future: "Follow the king" To him this meant not simply living a pure life and speaking the truth, but something else: righting wrongs And in righting that which is wrong there is frequently a certain amount of trepidation Let me give you one little, simple example of what is sometimes wrong.

Maxine and I heard and later read the story of a man named Mike Gold He was head of the Communist Party in the United States of America Mike Gold was a Jew brought up in a ghetto, not permitted to leave the ghetto because of the circumstances of the world in which he lived But there came a day when he had to go to school. His people were orthodox Jews and lived a rigorous Jewish life

When Mike went to school, his parents had their hearts in their throats, I suppose—and justifiably, because one day he came back battered and beaten, his clothes torn, his little face bloodied and cut. His mother took him in her arms and rocked him, and after awhile, when she had cleansed his wounds and comforted him, said, "Mikey, what happened to you?"

He said, "I don't know."

She said, "Well, who did this to you?"

He said, "Some boys."

She said, "Why?"

He said, "I don't know." They rocked awhile and then he looked in her face and said, "Mamma, what's a kike?" She explained that was a not-too-pleasant name for Jewish people They rocked some more and then he looked up into her face and said, "Mamma, who is Jesus Christ?"

And she said, "Christians believe in him as their savior Why, Mikey?"

He said, "They all chased me and threw rocks at me and when they caught me all these big boys hit me and knocked me

down and kicked me, called me a kike, and said that I had killed Jesus Christ and so I was getting what I deserved. Who is Jesus Christ?" Mike Gold used that little incident to justify the choices he made in the whole course of a lifetime. He didn't like America, and he certainly didn't like Christians, and he abominated the name *kike* and the name *Jesus Christ* Right wrongs

I had the honor to listen to a radio broadcast between a man named Thomas Dooley and an older physician. Dooley, sometimes called "the physician of the jungle," was in the hills of Laos, where he had gone to help those poor beleaguered people Now, after the war, he was over there spending his full time, not in the costly, pretentious, and rewarding ward rooms of the East where he had been brought up, but in the hills of Laos. This interview was to honor his birthday. I think he was no older than 31. He had come back to try to raise funds to help the people by establishing clinics This is how the interview went:

"Dr Dooley, you are in some serious health trouble yourself

Yet somehow you seem able to overcome that, put it in perspective, and spend your time helping these poor people who are without medical resources How can you do that? You are living, it is reported, on borrowed time." It was true He had leukemia

Dooley's answer was, "You're right sir, I am living on borrowed time. So are you And so is every other human being. What matters is not how much time, not what I have left, but whether the days, the months, and the years the Almighty has allotted unto me are used in terms of human good This," he said, "I will do so long as I can continue to borrow time" The phrase that sticks in my heart is his phrase "in terms of human good" That's

how he would use his talents, his training, his strength, and, while it lasted, his time. He died, in fact, before his next birthday.

Now I'd like to bear testimony to you that I connect in my own lifetime and in my own discipline with the qualities of which Gareth spoke, because the scriptures are full of them—to live pure, to speak true, and to right wrongs In the practice of law we get plenty of opportunities to make decisions that relate to all of these things

Whatever else we are, we are sons and daughters of God We are children with a noble and wonderful heritage We have life in a land which, with all its problems, is a good and marvelous place, but which can be incalculably better if those who create, apply, administer, and ultimately make judgment on its laws are the kind of people who have that shield to memory that comes only with the recollection that their choices have been right and sincere. I pray for you as earnestly as I know how, with not a lot of fantastic or foolish notions about what you face now and in the future, but with every confidence that there will be among you many who will not only serve the law but shape the law in accordance with your own concepts of integrity and decency and good conscience May you love and serve with integrity the great, great field of human endeavor called the law, I pray, in the name of Jesus Christ. Amen.



### Law School Reorganization Completed

In July Dean Reese Hansen announced the completion of the administrative reorganization of the Law School, which began earlier this year with his appointment as dean. Reese indicated that the transition in assignments would occur over the summer with the new responsibilities and titles to become effective at the beginning of fall semester. In making the announcement Dean Hansen stated: "The Law School is entering a stage of maturity which looms as promising as its initial years. I sense a level of commitment and enthusiasm in my administrative team which will match the Law School's needs during this new stage of its development. The administration's unifying leadership will benefit the entire Law School community: students, faculty, staff, alumni, and our friends in the J. Reuben Clark Law Society."

Dean Hansen outlined the changes in responsibility. He indicated that Dean Clifton Fleming would provide the constancy in the midst of change by continuing in his role as associate dean/academic and his significant interaction with both faculty and students. Reese stated that Cliff's responsibilities for faculty development and teaching assignments, course development and class scheduling, faculty committee assignments, and reporting of faculty activities and publications would continue. The dean also reported that the important function of insuring the Law School's compliance

with requirements of the American Bar Association and the American Association of Law Schools would continue with Cliff. Reese also mentioned that Dean Fleming's work with students, including the "Introduction to the Law" program for entering students; supervision of those seeking joint degrees or the master of comparative law; student awards, honors, competitions, and prizes; student discipline; and graduation, would remain unaltered.

To further solidify the close working relationship between the Law School and law library, Reese indicated that Dean Constance Lundberg had been given a new responsibility as associate dean/law librarian. This position would include management of all aspects of the law library and library fund-raising projects. Reese explained that Constance would continue to work with students in the American Inns of Court and the cocurricular programs.

Reese announced that Scott Cameron would serve in an expanded role as associate dean/administration. The dean explained that Scott would continue to work with the admission of new students, coordinate student financial aid, and oversee publications and public relations for the Law School. His position will also include supervising the externship programs, including Utah County Legal Services for the Law School, the management of the data base, the liaison with the J. Reuben Clark Law Society, and work on student-related matters with Assistant Dean Kathy Pullins.

Praising her for excellent service to the students in

the area of career service and placement, Dean Hansen went on to announce the appointment of Kathy Pullins as assistant dean/placement and student services. He explained that Dean Pullins' new responsibilities with student organizations and counseling would complement the work she is already performing.

Dean Hansen concluded his announcement with recognition of three individuals who he said he could not function without: Carolyn Stewart, Peter Mueller, and Larry Bluth. He informed the *Clark Memorandum* that Carolyn Stewart would continue to provide stability as his administrative assistant. He attributed the smooth function of the Law School to the continuity from dean to dean that Carolyn has provided. He stated that she would continue to have significant contact with students in scheduling the building and events that will take place in the Law School, and she would also continue to oversee the Law School staff, student employment, and visitor hospitality. Carolyn will serve as executive secretary to the J. Reuben Clark Law Society, the alumni association, and the Board of Visitors, according to Reese.

His explanation of the responsibilities of Peter Mueller and Larry Bluth was interspersed with praise for these two men. He said they would serve as assistants to the dean in the areas of physical facilities and budget and development respectively. Reese feels that although these positions are not as visible as many in the Law School, their functions are essential for the orderly management

and continued growth of the Law School.

Dean Hansen expressed his hope that the reorganization of the Law School would more effectively meet the needs of the students. He reiterated his great confidence that the administration had the desire and the drive to bring the Law School through the decade of the 90s into the new century.

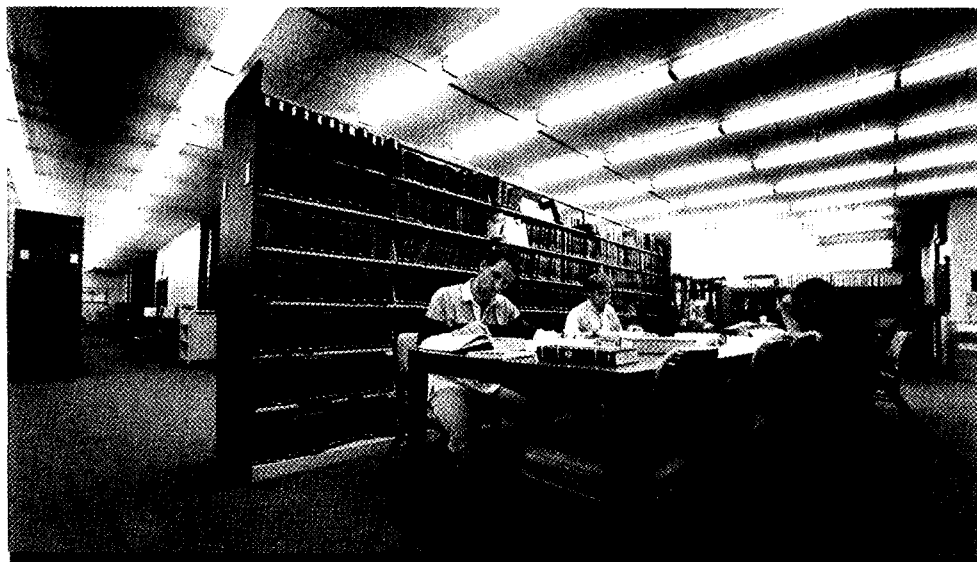
### Dean Lundberg Discusses Future of the Law Library

In a conversation with the *Clark Memorandum*, Constance Lundberg shared her enthusiasm and aspirations about her position as associate dean/law librarian. Constance feels that the change in status of the law librarian to associate dean is a reflection of the commitment of both the university and the Law School to the library. She feels that this commitment is both functionally and symbolically important.

Explaining that she comes from a tradition of strong, aggressive law librarians, Dean Lundberg indicated that she is firmly convinced that law school and law library concerns are all the same. She is convinced that you can't have a good law school without a good library being integrated into its daily business.

Dean Lundberg noted that there is no question that we have a very strong law library. But, she stated with equal clarity: "We do not have a distinctive library, and I think we need to focus the collection in a way that meets what I view as the long-term mission of the Law School."





Constance wants to build a powerful and exceptional collection in several areas: an international collection, a resources and environment collection to complement the collection of the Ezra Taft Benson Institute, and a collection that would address the moral and ethical dimensions of the law

With the growth of The Church of Jesus Christ of Latter-day Saints internationally, the interest and language ability of most of our student body and alumni, and the strength of the internationalists on the faculty, Constance indicated that a strong international collection must be one of the areas of primary focus for the library. At the present time she noted that we have no South American or Asian collections. Even though we have a modest European collection, it is dated. With the coming changes in the European Economic Community in 1992, Constance stated that the library needs to update its collection. As an example of our acute need, Constance noted that the *Law Review* publishes an international comparative law issue

yearly, but it takes a full year for the students to write the papers because they have to get all of the materials from interlibrary loan. The international curriculum at the Law School cannot be expanded until the materials to support the expansion are acquired.

Constance would also like to see the law library, in conjunction with the Lee Library and the Social Science and Philosophy departments, build a powerful collection addressing the moral and ethical dimensions of the law. With members of the faculty like Bruce Hafen and Lynn Wardle, who have done excellent work in the area of family law, and Fred Gedicks, who specializes in law and religion, we need to think about how to build a collection to support thinking, research, and writing in these areas.

According to Dean Lundberg, the collection should be built by getting the faculty involved with collection planning. She feels that the law library will be better able to support faculty research if faculty become involved in the collection. She is also in favor of interdisciplinary research

and would like the teaching faculty and the five non-teaching library faculty to cooperate in the legal research and writing produced at the Law School. Dean Lundberg sees untapped power in such collaborative efforts.

When asked about the expense in building such a collection, Dean Lundberg's enthusiasm did not slacken. She is convinced that an endowment must be created. She said that we should be most grateful for the caring support of the university and the Church in building and maintaining our core collection. However, she made it clear that they will not and should not have to support the sort of in-depth research collection we need. Constance is excited about the prospect of finding other sources of funding for what she terms a "leap into greatness." A \$2 million endowment must be established to support collection development in the areas mentioned.

Constance counts on the support of the alumni. She indicated that the alumni were once students who benefited from the library and are aware of its

strengths and deficiencies. Constance hopes that this personal experience and the knowledge that the strength of any law school is in its faculty and library will be catalysts to their generous donations.

In the international and resources areas, Dean Lundberg is hoping for corporate support. She has been meeting with the general counsels of several major corporations with ties to the Law School. She intends to convince them that a stronger library would support their corporate activities and would be a financial resource to them.

It is impossible to speak with Dean Lundberg without noting her delight at finally uniting her skills as a librarian with her love of the law. It appears that the Law School community will reap significant benefits from the union.

### **Durham Confers with Emerging Eastern European Democracies**

The past year has been a remarkable one in Eastern Europe, with communist governments either falling or undergoing radical change. One of our faculty members, Professor Cole Durham, recently returned from a two-month stay in Europe, where he was closely involved in monitoring the dramatic changes occurring in former east-bloc countries. By a fortunate coincidence, just as the events in Eastern Europe were unfolding last October, Professor Durham was elected to serve as the Secretary of the American Association for the Comparative Study of Law—the leading comparative law organization in the United States. This

position, together with Professor Durham's experience over the years teaching comparative constitutional law and comparative law, made it natural for him to focus his research on Eastern European developments.

During the spring of 1990, Professor Durham was invited to conduct research at two major research institutions in West Germany: the Max Planck Institute of International and Foreign Criminal Law in Freiburg, and the Max Planck Institute of Comparative Constitutional Law in Heidelberg. Using these institutes as a base, he traveled extensively and met with legal scholars and political leaders involved in the processes of constitutional change in Yugoslavia, Bulgaria, Romania, Hungary, Czechoslovakia, and Poland.

an orthodox priest who is a leading charismatic figure in the opposition movement there. While in Romania he met with the law faculty of the Academy of Economic Science, various human right activists, the mayor of a sector of Bucharest, and the Minister of Religion. This contact was of particular note, since it provided the opening for Professor Durham to file a letter outlining LDS views on religious liberty with the minister at a time when crucial policy decisions about church and state issues in Romania were being formulated. Durham also met with legal academics in Hungary and Czechoslovakia. While in Czechoslovakia, he conferred with a leading official responsible for religious affairs, and he was invited



In Yugoslavia, he met with the dean of the legal faculty in Belgrade (a key draftsman of the state level constitution of Serbia) and with the head of the International Association of Legal Science. In Bulgaria, Durham met with several law professors and opposition party leaders, including

to prepare comments on a draft Czech statute that will govern the temporal affairs of religious bodies in that country. Finally, he met with several key players who are involved in drafting the new Polish Constitution, including a newly appointed member of the Polish Constitutional Court.

Professor Durham reports that in these countries there is a pervasive sense of a need for a new start and a need to revitalize political processes. There is a great need for legal materials and models that can help in the process of revamping legal systems. Even more striking is the tremendous concern about moral decay, alcoholism, disintegrating families, and other similar problems that are seen everywhere as the legacy of communist regimes. Many Eastern European leaders are searching for ways to instill moral, family, and work-ethic values in the rising generation, and there is great openness to religion as a source of help on this front. Religion has played a vital role in bringing about the democratic processes in Eastern Europe, and most leaders seem committed to assuring that new constitutions will guarantee some measure of religious liberty. A major concern is to make certain that new constitutional provisions and practices will protect minority religious groups as well as the more dominant religious organizations that have been most visible in bringing about legal reform.

As a part of the Law School's ongoing efforts to sponsor symposia on law-related matters, a conference on the developments in Eastern Europe is being planned for early 1991. Also, the school is hoping to organize a meeting of the International Association of Legal Science at BYU sometime in 1992. Closer at hand, Professor Durham will be teaching a seminar this fall on Comparative Constitutional Law with a special emphasis on devel-

opments in Eastern Europe. Besides the conferences and seminar, the school is also organizing efforts to collect U.S. legal materials that could be sent to libraries in Eastern European law schools and other institutions. Many law firms routinely discard advance sheets for national reporter systems, volumes that are being replaced by new editions (e.g., tax services), and other materials that could be very useful to legal scholars and libraries in Eastern Europe. If there are alumni who are aware of such materials that could be donated, they should contact Professor Durham. This would be a promising way to make a genuine contribution to the law reform process and help strengthen our ties with Eastern European countries.

#### David Dominguez and Diversity

For David Dominguez, who just accepted a permanent faculty position with the Law School, diversity at the university or in society means more than minority rights, more than just handing out special benefits to women or to people of color. "When you talk about diversity, you're really talking about an ethic. What we're talking about at this law school is enabling people, even if they are of the same gender, nationality or race, to understand that they add value to each other's lives because there are differences in their backgrounds." He explains, "There are always differences—there are differences between a man and his wife who love each other deeply. The question is how to turn what might

otherwise be liabilities into assets. How do we frame the kind of dialogue that enables people to say, 'I want to discover about you that which will contribute more to my life, and I want to contribute to your life in the same way.?'"

David's commitment to the value of diversity forms the core of his teaching philosophy. He explains: "I sum up my own teaching philosophy with the term 'negotiated learning.' A student should never simply absorb the material the professor presents. There needs to be some point where the student has to meet the professor and offer something of his or her background. Then there will be something unique in the incorporation of the material

"I attempt to stimulate the student to see how all those years of living make a difference in the way he or she understands and values the material. No two students appreciate the doctrines, the history, or the development of the law in the same way. Instead, because of how they were raised, because of what they have been through in life, they see that doctrine as either a particularly good, workable point of the law, or something that requires reshaping to make it more responsive to the needs of people.

"In the courses I teach—criminal law, labor law, and negotiations—it should be easy to see that there are areas with which students resonate and other areas where they're just confounded. They can't imagine that all our efforts have only led to the development of a law that sadly lacks the ability to deal with the human condition.



"I want students to believe that it is not enough to take the materials as given. They, as the next generation of attorneys, judges, and law professors, must say to themselves, 'I have to make a difference in the direction the law takes.'"

Making such a personal commitment is something David Dominguez understands well. As a Chicano-Latino (as he calls himself) growing up in East L.A., he understood the challenges of living in a society that is often intolerant of its own diversity. He rapidly became aware of the great need to "make a difference"

David admits he was not "shy" about living on the streets of L.A., so he was not spared any of the harshness of inner-city life. He recalls several "close calls" But these life-threatening experiences served to awaken David's religious convictions. After having his life spared repeatedly, he became convinced that God must be saving him for something.

Toward the end of high school David had "settled down quite a bit" and in the end was awarded a scholarship to Yale. Yale, however,

proved to be a painful adjustment. After recognizing that the other students' educational preparations were far superior to his, the years at Yale became a time of real trial. He quickly realized that with traditional measures of academic success, he was at a competitive disadvantage

David was sustained by his deepening religious convictions. As a sophomore he committed himself fully to the Lord and devoted himself to religious studies. He began asking how everything he learned affected the human condition. He also began looking for alternative methods to show his worth and achievement. His professors began to acknowledge his contributions, and eventually his efforts paid off. David graduated from Yale with honors.

During his studies at Yale, David had become interested in what he could do on a larger scale to further Christian ideals. He was especially interested in furthering the cause of the poor, the oppressed, and the needy. He rejected the idea of going into the seminary because he did not think it

would let him be "at the cutting edge of the problems." Instead he decided to go to law school, hoping to learn problem-solving skills. "I thought law school would give me the equipment so that I could be about the business of giving people greater hope in what they could accomplish as a group."

David was accepted to law school at UC-Berkeley. But after he arrived he was "rudely awakened." He explains: "When I got to Boalt it struck me that I was being asked to master a particular substantive doctrine that was not especially given to equity, justice, fairness, truth, or the kind of ideals I thought would govern the development of the law. It struck me that there was a lot in the law that reflected money interest, class interest, gender interest, race interest, etc.—that as with all man-made structures the law was no different in being imbued with all the discriminatory practices and the hateful stereotypes that you might see in any other large institution."

He continues: "It was discouraging to think that I was being asked to master my legal studies so that I could be an agent of that system. It probably didn't dawn on me until the end of my first year when I realized that I was studying for finals in a way that would make corporate America proud—that those who would have the most vested interest in protecting the status quo would be especially pleased to see how I was trying to master my studies. That disturbed me because I didn't see myself as a lawyer that would just be adding my own overlay on the corporate scene."

But David did not quit. After consulting with several people it became clear to him that he didn't have to "take the legal system on its own terms." He realized that the legal system was a "critical player in the determination of the societal arrangement." He resolved: "If I as a lawyer could start offering an alternative to the traditional approach, perhaps others would be willing to take on the legal system to open it up more and more—to allow for greater accessibility and less cost—to allow for the legal system to be a friend as well as a foe to the poor, to the people of the inner city, to people of color, etc."

After graduating from law school at Berkeley in 1980, David found his "niche" in labor law. For the following eight years he worked as a trial attorney for the National Labor Relations Board. Although it was often discouraging during the cutbacks of the Reagan administration to work with "a law that became more and more narrow—harder to apply to the needs of various workers," David regards his years with the board as a "tremendous blessing."

"Coming from a religious studies background, I appreciate that life is but a composite of stories. I was working out of Oakland so I met people of every conceivable background. I had the opportunity to be in hundreds of their homes, listening to their stories one after another for eight years. I wouldn't have traded that experience for anything."

But it was David's academic appointment at UC-Berkeley that gradually became the "turning point" in his career. Shortly after

graduation, he began designing programs to identify and to motivate minority undergraduates who were interested in law.

He taught them prelaw noncredit seminars in legal writing and reasoning, and preparation for moot court and summer internships. He explains: "My motivation in approaching the Cal. administration was simply that I thought that students preparing for law shouldn't be as rudely awakened as I was entering law school. I wanted to be a buffer, a transitional coach—that's all. But the more I got into it the more I realized I was looking at the tip of an iceberg—that below the surface of the water there was a large feeling of confusion and alienation by these minority students. The problem was much greater than simply the lack of preparation for a professional school. They were struggling with what their role was in the larger society. The more I spoke with them, the better I could see that, as a role model, just by simply being in their presence and cheering them on, I could get them to say to themselves, 'there's a whole lot more I'm going to do in this world than be a lawyer (suddenly they were no longer asking whether they were going to make it). Surely I'm going to make it; now what am I going to do once I make it?'" As he worked to bring about this transition in the students on a larger scale, the experience became exhilarating for David.

It was his experiences in teaching and working closely with these students that lead him to finally leave the Labor Relations Board to accept a full-time

position at UC-Berkeley as assistant to the provost before coming to BYU as a visiting associate professor.

David's ability to be an effective role model was undoubtedly strengthened by his clear understanding of the challenges facing minority students. "The study of law is no different than any other profession for a person of color in this society. Where traditional values such as intelligence are being measured, you have the burden of doubt against you. As a person of color you must prove not only that you're competitive but also that you're one of the better performers—if not a stellar performer—if you're to gain the respect that someone else gains simply by having arrived. There's always the impression that you don't really belong or measure up, but that out of a political gesture you've been given some accommodation. It presents the challenges of knowing you are not taken as an equal colleague and realizing that you must rise to the occasion and prove that you belong."

Yet David is quick to add, "In fairness to this law school, I have never seen a more determined effort to be sensitive and open to anyone who desires to be here and to add their contribution. Brigham Young University has been a pleasant surprise. It is a great encouragement to me to see people act as a team in saying that [diversity] is clearly a priority—that rather than ignore it, we are going to make it a fundamental dimension of legal study at BYU."

David is impressed with how far the Law School has come. He is impressed with

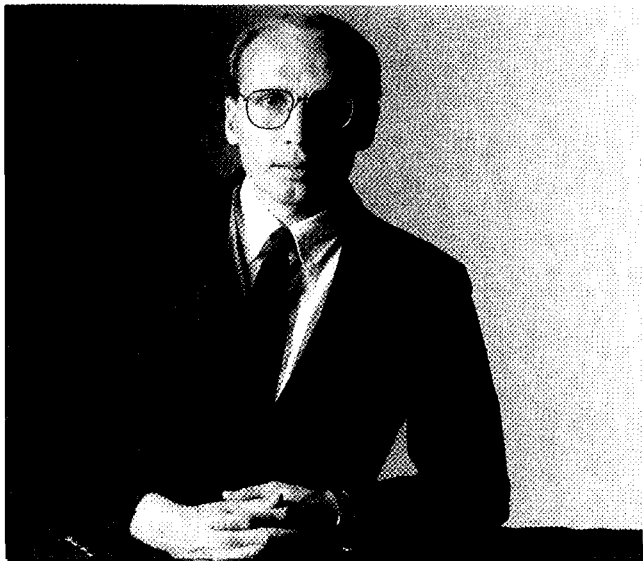
the work and enthusiasm of both the faculty diversity committee and the student diversity group. He is excited about the developing exchange program with Howard University and the improving employment opportunities for BYU minority students. But he recognizes that as a newer law school "we still have a long row to hoe."

"I would like to think about the day when the school is composed of a proper share (of course 'proper' is the kind of word that no particular person can describe; it is a decision of the whole law school) of women students, students of color, and so on. I think that day is coming. We are certainly moving in that direction."

At the same time David cautions: "We are not committed to cosmetic changes for their own sake. We hope that such changes will ultimately be the last sign that all the interior parts are working correctly."

"We are trying to design the kind of school, the kind of legal study that would attract minority applicants. We hope they will see at BYU certain intentional behaviors, attitudes, and ethics that are far more responsive to needs of color, women—and everyone else—than at other law schools." David realizes that such accomplishments are not going to be achieved overnight. But he insists, "The seedlings are very promising."

For now, David Dominguez is very enthusiastic about the work set out for him at BYU. He concludes, "I'm not sure where I go from here or what I do next, but for the time being, this is quite a place to be."



### Gedicks Joins Law Faculty

Fred Gedicks' interest in the interface between law and religion started while he was a law student at USC. He was bothered by an establishment clause argument in *Harris v. McRae*, an abortion-funding case before the Supreme Court. In *Harris*, opponents of a cutoff of federal funding for most abortions argued that the premise of the cutoff was the religious belief that the fetus is a human being, leaving the cutoff without a secular purpose. "It didn't seem fair," said Fred, "for the religious convictions of those involved in the political process to become a basis for invalidating laws under the establishment clause. This forces religious people either to stay out of politics completely, or to disguise their religious beliefs whenever they are politically involved." Mormons, he believes, do this as much as other religious people, tending to be self-conscious of their beliefs in public settings. Fred wrote his senior paper at USC on this topic, and it has grown into a principal theme of his published work.

Fred went into law teaching after four years of securities law practice in Phoenix. His first appointment was at Mercer University, a Baptist university in Macon, Georgia. For a Californian with New Jersey roots and Utah ties, the rural South was a fascinating (and frustrating) cultural experience. He spent the last year at the University of Denver, which was more familiar territory.

Fred enjoys teaching as well as scholarship, and looks forward to interacting with students in the classroom. He observes that the composition of a class contributes greatly to the content of the discussion. "It seems that the dynamics of a class composed mostly of white males are very different from those in one that has substantial numbers of minority and female students," says Fred. "Diversity in the classroom increases the sensitivity of some majority students, and draws more nonmajority students into the discussion." Fred believes that this is a critical component of legal education. If everyone is the same, their common assumptions about life seem

so natural and so innately true that they fail to appreciate the varying impact of the law on others in different situations.

Fred is approaching his experience at BYU Law School with excitement and curiosity. Having been an undergraduate at BYU, he feels a bit like he has come home. He is also interested in why, with so many other fine law schools around the country, there needs to be a law school at BYU. The justification, he thinks, must be that there is something valuable to be contributed to legal education and scholarship by those who come at things from a Mormon point of view. Fred hopes to be a part of the effort to articulate what it is that Mormonism can bring to the law.

### Noted NAACP Leader, Margaret Bush Wilson, Visits BYU Law School

Earlier this year the J. Reuben Clark Law School was again honored by a visit from Margaret Bush Wilson, distinguished visiting professor of law and former member of the school's Board of Visitors. Mrs. Wilson's stay spanned the first two weeks of winter semester classes, and she delivered several class lectures, addressing the Constitutional Law, Administrative Law, Professional Responsibility, Real Estate Finance, and Property classes.

Mrs. Wilson also described the reaction of her friends when she told them that she would be teaching at the J. Reuben Clark Law School in Provo. When they asked "Where's that?" she replied that it was a short distance from

Salt Lake City, Utah. This brought the question "Isn't that Mormon country?"

"Yes," she rejoined, "I'm going out to a Mormon school."

Astonished, her friends then asked "You're going to do *what*? Aren't the Mormons the folks that don't like black folks?"

Characteristically, Margaret Bush Wilson told them that she would just have to come and find out. At the end of her visit she remarked that she had found Utah folks and Mormons not very different from anyone else in the country.

In one address to a standing-room-only crowd, Mrs. Wilson recounted, as only a front-row player could, the human element of the famous case of *Shelley v. Kraemer*, 334 U.S. 1 (1948). She told of a confused America and of the personal travails of the J.D. Shelley family. One Sunday afternoon, as black churchgoers were returning to their homes, J.D. Shelley witnessed a young domestic servant, innocent of any crime, beaten mercilessly by police using thick rubber hoses. He and his wife retrieved the young girl's bloodied body from the gutter where the officers had tossed her. That evening J.D. Shelley resolved to leave Starkville, Mississippi, to protect his children from meeting a similar fate. Mr. Shelley took his family to St. Louis, Missouri. Both he and his wife, Ethel, worked long hours. The family crowded into a tiny three-room apartment in the segregated quarter of St. Louis. Soon their savings allowed them to share in the American dream of home ownership.

Mrs. Wilson, then a new attorney, recounted how her realtor father helped J D. and Ethel Shelley purchase a home on Labadie Avenue, just down the block from Louis and Fern Kraemer. As a young lawyer she was called upon by her father to incorporate the Real Estate Brokers Association of St. Louis, the organization that helped the Shelleys in their legal battle to keep their home. The rest, as they say, is history.

So spellbound was the crowd that one listening to the tape recording of Mrs. Wilson's remarks might well believe that she spoke to an empty room. She so completely captured the hearts of the students and faculty of the Law School that she was treated to a five-minute standing ovation after her address.

Mrs. Wilson also participated in another special forum, where she shared her experiences working with Dr. Martin Luther King, Jr., and told of his early days and some events that directed and focused his work. She told of Rosa Parks, and the Montgomery, Alabama, bus boycott. As she retold events known only through history books to many of us, Mrs. Wilson's voice was a testimony of the grace, dignity, and power that can result only from long years of struggle to right a grievous wrong.

When not preparing for class lectures, much of Mrs. Wilson's time was spent working with Professor Richard Wilkins. Professor Wilkins and Mrs. Wilson are currently collaborating on a monograph that will examine the history of *Shelley v. Kraemer* and its human element, as well as an analysis of

contemporary legal, social, and political efforts to achieve racial equality.

Mrs. Wilson's vita reflects a lifetime of service to her profession and community. Beyond her many years of private practice as senior partner in the firm of Wilson and Associates, she has also been involved in government service in the Legal Division of the Rural Electrification Administration, as an assistant attorney general of Missouri, and as a legal service specialist in the State Technical Assistance Office of the War on Poverty. And her contribution to education has been multifaceted, serving as an instructor in the CLEO law school preparation program at St. Louis University and as program administrator in the Missouri Department of Community Affairs. In addition to her service to the J. Reuben Clark Law School, she sits on numerous other boards of many colleges, including St. Augustine's College, Webster College, Washington University, and the Association of Episcopal Colleges.

Recognized by several civic organizations, Mrs. Wilson is the recipient of honorary degrees from such diverse universities as Boston University, Washington University, Talladega College, and Alabama State University. Her civic service extends into many quarters. She sits on the board of directors of the Police Foundation; Institute for Civil Justice; and the James T. Bush Center for Law, Social Change, and Conflict Resolution. She has also received recognition from the Episcopal Bishop of St. Louis.



JONES

But perhaps Margaret Bush Wilson is best known for her legendary service to the NAACP. In her own words, the initials represent the National Association for the Advancement of Civilized Persons. Her mother, Berenice Casey Bush, was an active member of the executive committee of the St. Louis NAACP in the 20s and 30s. Her father, James T. Bush, was a pioneer real estate broker in segregated St. Louis. His legacy is now memorialized at the University of Missouri at St. Louis, with the James T. Bush Center for Law, Social Change, and Conflict Resolution bearing his name. Mrs. Wilson has been instrumental in focusing the center on developing housing delivery systems to better serve the poor.

Margaret Bush Wilson received her law training at the Lincoln University School of Law, after graduating with honors from Talladega College with a degree in economics. Her early legal career often took her out of her comfortable home territory in St. Louis and into the Boot Heel of Missouri to represent blacks when no other attorneys were willing to venture forth. Long-time legal associate and friend, Charles Oldham, notes that she is "always unflappable in

court, and most of the time in private life . . . on occasion [raising] her voice above its normal ladylike volume" when confronted by those who oppose civil rights progress. Mr. Oldham and his wife, Marian, describe her as a "fearless fighter . . . independent and . . . without fear of retaliation or loss."

Mrs. Wilson is equally adept at challenging traditional notions of justice within the intellectual realm. As a member of the board of directors for America's premier criminal justice think tank, the Police Foundation, she has brought a personal understanding of the dynamics and destructive nature of racism to bear in wrestling with policy components of modern law enforcement. The Police Foundation's president, Hubert Williams, relates how Mrs. Wilson "engages some of the best thinkers . . . on the finer points of policy formation" and has aimed them at improving police interaction with inner-city communities. She has broadened the scope of the foundation's research to include an emphasis on the police culture and its effect on minority communities and systems of police accountability.

Richard J. Mahoney, chairman of the Board and

Chief Executive Officer of the Monsanto Company tells of how Mrs. Wilson refined corporate attitudes toward employees. Several years ago, the Monsanto board of directors was considering closing a European plant. At the time, Mrs. Wilson was a director of the Monsanto Company. The executive who was explaining plans for shifting personnel and helping those who would lose jobs noted that there were "perhaps 100 people redundant in this plant." Mrs. Wilson stopped him short. "Young man," she said, "there are no redundant people in this world; there are people misplaced, there are people who have yet to find another opportunity, but there are no redundant people."

Mr. Mahoney noted that, for all the effort to assist displaced employees, the company had depersonalized them, remembering only the numbers. Corporate policy and behavior with regard to thousands of workers was rethought. As the company faced new challenges to maintain its international position, Monsanto was guided by the simple, direct words of Margaret Bush Wilson: "There are no redundant people in this world."

The full text of Mrs. Wilson's remarks on *Shelley v. Kraemer* appear in the *BYU Journal of Public Law*, Volume 4, Number 2, along with a biographical tribute to this remarkable woman. For a reprint of the address and tribute, please write Ken Wallentine at 2362 North 850 West, Provo, Utah 84604. Please enclose \$1 to help cover the cost of photocopying and postage.

—Kenneth R. Wallentine

### Board of Visitors Holds 1990 Meetings

The Board of Visitors held its 1990 annual meeting March 1-3. The board's 25 members represent all sectors of the legal community: law firms, academia, and all three branches of government. The purpose of the board is to independently evaluate the Law School and recommend improvements to the administration.

At its opening dinner on Thursday night, the Board heard about the status of the Law School from administrators. For example, Rex Lee, current president of Brigham Young University and former Law School dean, spoke of the difficulty of enforcing a student enrollment cap while an increasing number of students desire to attend BYU, including the Law School.

On Friday the board discussed with the faculty the challenge of better training students to meet the challenges facing the legal profession. William Atkin of Baker & McKenzie, Fred Bennett of Gibson, Dunn & Cutcher, and Marianne Smythe of the Securities

and Exchange Commission moderated the discussion. A lively debate ensued on the wisdom of asking new associates to work an ever-increasing number of hours. Board members from the law firms emphasized the importance of attorney efficiency—getting the right answer quickly—while some law professors stressed the need for more thoughtful legal analysis. At the conclusion of the luncheon discussion, the board separated into smaller groups to meet with students and faculty on specific issues such as diversity, women and the law, and career placement. That night, board members and students met in faculty members' homes for informal discussions on legal topics.

On Saturday morning, the board met for several hours in plenary session to discuss its findings. The discussion groups each reported the results of their Friday afternoon meetings.

*Diversity* J. Clay Smith Jr., a law professor at Howard University, reported that the Law School is progressing toward greater diversity in faculty hiring and student admissions.

To illustrate, he cited the addition of David Dominguez as a law professor and the initiation of an exchange program with Howard University. To further increase diversity at the law school, the board explored ways of improving communications about BYU across the country. Larry Echohawk, Bannock (Idaho) County Attorney, stressed the importance of an informal network of persons to encourage minority and women students to apply at BYU. Some Board members felt that parts of BYU's Honor Code were a barrier to expanding the number of non-LDS students attending the Law School. However, Professor Edward Kimball suggested that the Law School views its values as a virtue rather than a detriment.

#### *Women and the Law.*

Marianne Jennings, a business professor at Arizona State University, stated that the Law School needs to better address how female attorneys can balance family and professional responsibilities. Judge Kenneth F. Ripple, U.S. Court of Appeals for the Seventh Circuit, felt



that BYU was well-qualified to lead this discussion for all law schools.

**Job Placement.** Fred Bennett reported that the school needs to emphasize placing more students in geographical areas outside the western United States. In addition, the group agreed that more students could be placed with corporate legal departments rather than just with law firms.

In closing, some Board members expressed their desire to increase student involvement with the Board of Visitors next year. Marianne Smythe wanted to spend more time with students and to involve them more with board activities. Others suggested that students should become more familiar with the mission of the board and should have more advanced notice of the board's activities.

—Richard A. Bark, *Student Member of the Board*

#### **Dewsnup Chosen as Honored Alumnus**

Ralph Dewsnup of the Law School's second graduating class has been chosen as the law school's honored alumnus for Homecoming 1990. For the 13 years since his graduation, Ralph has enjoyed a successful medical malpractice, personal injury, and products liability practice with W. Eugene Hansen in Salt Lake City. Since Eugene Hansen was called to be a general authority for the LDS Church, Ralph has become vice president of his newly established firm, Wilcox, Dewsnup, & King. He continues to practice primarily in personal injury with an emphasis in medical malpractice.

Ralph is also currently a lieutenant colonel in the

Utah Air National Guard's headquarters staff in charge of planning and programming, the president of the Utah Trial Lawyers Association, and a member of the executive committee of the Utah State Bar's litigation section. Ralph has previously served the Utah State Bar in various other capacities. He was twice the chairman of its Legal/Medical Committee (1979–84, 1987–88). From 1978 to 1982 he was the reporter for its Jury Instruction Committee. And from 1980 to 1984 he was co-chair of the bar's Interprofessional Committee. (In 1982 he was also editor of the Interprofessional Code for Utah.)

Ralph has played a significant, ongoing role in the development of the American Inns of Court movement. After Judge Christensen invited him to be a charter AIC member in 1980, Ralph was selected to serve on AIC's executive committee and to edit its newsletter. Three years later, on Judge Christensen's recommendation, Chief Justice Burger appointed him to the U.S. Judicial Conference Ad Hoc Committee on American Inns of Court. Then, in 1985 when the AIC Foundation was established, he was asked to serve as secretary to its board of trustees. He has since been appointed, and then re-elected as an AICF Trustee, after being named "master of the bench" in his local AIC chapter. He continues to serve as both secretary to the board and as editor of the AICF newsletter, *The Benchner*.

In addition to his many professional endeavors, Ralph has found time to be a loving husband and father of five. He has served in the Church as young men's

president, Sunday School teacher, high counselor, and bishop. He is now the president of the Salt Lake, Highland Stake.

Ralph will give the honored alumnus lecture at the Law School on October 25 (Thursday of Homecoming week) at 7 p.m. We look forward to his remarks.

#### **Alumni Association Board of Directors Formed**

To better serve the growing number of BYU Law School alumni, a six-person governing board has recently been organized. This committee will plan all-alumni events, assist in reunion activities, and advise the school's administration on many alumni matters.

The board has held its organizational meetings and has planned a Law School all-alumni banquet for Friday, October 26, 1990. The event will be held in the Salt Lake Marriott and will feature Elder Dallin H. Oaks as the keynote speaker. Though there is much to be decided, the Alumni Association will focus on two principal areas: (1) services to alumni and (2) services to the Law School. Your ideas, suggestions, and participation are encouraged and invited.

The members of the board are:

**Ted D. Lewis, Chair**—Ted was a member of the 1976 charter graduating class of the Law School. He has served in the Utah House of Representatives since 1983. Ted has worked on various task forces, councils, and commissions, including the Utah Energy Conservation and Development Council, the Utah Tax Recodification Commission, and the Utah Constitutional

Revision Commission.

He has served as vice president and general counsel for the Donner Company, has been a solo practitioner and is currently legal counsel for Beneficial Life Insurance Company. Ted is a New Mexico native and is married and the father of five children.

**Tamar Sue Jergensen**—Tamar graduated from the Law School in 1988 after participating in moot court and taking an active role in student associations and activities. Since graduation, she has been actively involved in local politics and other community activities. After a clerkship at the Utah Court of Appeals, she joined the firm of Corbridge, Baird & Christensen in Salt Lake City. Tamar has practiced in real property, construction, and bankruptcy. She plans to add international law to her interests, pending her relocation to the Soviet Union later this year.

**Robin L. Riggs**—Robin is a 1982 graduate of the Law School who received his master of public administration the same year from BYU. He is currently serving as associate general counsel for the Utah Legislature and as executive director of the Utah Constitutional Revision Commission. He has been a guest lecturer at the University of Utah College of Law and an instructor at Utah Valley Community College. Robin works extensively in the community, serving on the board of trustees of the Utah Lawyers for the Arts and furthering the efforts to bring the Olympics to Utah. In addition, he enjoys music, sporting events, and travel.

**Curtis R. Hussey**—Curtis received his J.D. from the



law school in 1989. While in law school he was a member of the national moot court teams and is a member of the Order of the Barrister. Curtis practices in the commercial litigation department of the Salt Lake City Office of Davis, Graham & Stubbs. Before turning to the legal profession, Curtis was a credit officer for a national bank, where he worked in commercial, real estate, consumer, and agricultural lending.

**Enid Greene**—Enid graduated from the Law School in 1983, where she was active in moot court and served on the law review editorial staff. Currently practicing in the litigation section at Ray, Quinney & Nebeker, she has been extensively involved with the Young Republican National Federation and is currently serving as its co-chair. Enid has also served on committees for the Utah Bar and charitable organizations. Her interests include music, literature, travel, and the outdoors.

**Mike L. Hutchings**—Mike is a 1979 graduate of the Law School who returned in 1989 to receive the Honored Alumnus Award. He has served as a Third Circuit Court Judge in Salt Lake City since 1983. He was selected circuit judge of year in 1988 by the Utah Bar Association. Mike is active in various activities with the judiciary and the bar including membership on the Utah State Judicial Council, the Utah Bar Journal Editorial Board, the Delay Reduction Committee of the National Conference of State Trial Judges, and the Utah State Bar Fee Arbitration Committee. Mike is an avid BYU and Utah Jazz sports fan.

## Class Notes

### Alice and Brad Jardine, 1977, 1978

Although Alice has not practiced law since last summer, until that time she worked consistently since attending law school, taking off only a few months for the births of four of their five children (Alice and Brad had their first child while they were both at JRCLS). Working exclusively in real estate, she devoted her practice primarily to the drafting of contracts and covenants, conditions and restrictions. Brad is now a partner in a 35-lawyer firm in Phoenix. Working mainly in trial practice, Brad specializes in personal injury defense. With Brad serving as a counselor in the bishopric and Alice teaching in the Relief Society, they comment: "Our lives are very full."

### David J. Harmer, 1988

Since graduation David has served on the Minority Council, and the U.S. Senate's Subcommittee on the Judiciary. From 1988 to 1989 he served on Senator Orrin Hatch's Judiciary Committee staff, focusing on constitutional matters, criminal law, and the administration of justice. He was instrumental in the passage of S1163, limiting incarceration for civil contempt in child custody cases (which was part of the effort to free Dr. Elizabeth Morgan after a year's incarceration). On leave from O'Melveny & Meyers in Los Angeles, David is presently a fellow at the College of Public Law of the Pacific Legal Foundation in Sacramento. Litigating primarily in defense of individual and economic freedoms, the

Pacific Legal Foundation is the nation's oldest and largest conservative public interest law firm. David works in the PLF's environmental section but will return to his L.A. firm in October.



### H.E. "Bud" Scruggs, 1984

In the year following his graduation in 1984, Bud was counsel to the U.S. Senate Judiciary Committee, Subcommittee on the Constitution. In 1985 he became partner and CEO of the political consulting firm, Public Affairs Advisory Group. While he was with PAAG, he managed the reelection campaigns of Senators Jake Garn and Orrin Hatch. Since his appointment in December of 1988, Bud has served Norman Bangerter, governor of Utah, as his chief of staff. He and his wife, Shirley, have five children. Bud is currently the elders quorum president of his Bountiful ward.

### Sterling A. Brennen, 1986

After graduating from the Law School in 1986, Sterling worked for one year in Los Angeles as a law clerk to U.S. District Judge A. Andrew Hauk. He then joined the Orange County office of McKenna, Conner & Cuneo, a firm he had clerked for while still in law school. Since February of

1988 Sterling has been an associate with the Orange County office of Morrison & Foerster. Though he has generally represented institutional clients in business litigation, Morrison & Foerster has also encouraged him to represent a large number of *pro bono* clients. In addition to keeping busy in various matters of the California State Bar, he has served in the Church as elders quorum president, stake high counselor, and is currently serving as a counselor in the bishopric. He and his wife, Annette, are the proud parents of two young sons and a brand new baby daughter.

### Bruce T. Reese, 1976

As vice president and general counsel of Bonneville International Corporation, Bruce believes he has "the best legal job in the country" (Bonneville operates radio and television stations in many cities throughout the U.S.). With "great people and a great owner" to work with, he says he "loves going to work." Before joining Bonneville in 1984, Bruce worked for the Justice Department from 1976-77; Wilkinson, Cragen & Barker, 1977-79; Davis, Graham & Stubbs, 1979-82; and Wilkinson, Barker, Knauer & Quinn, 1983-84. Bruce and his wife, LuAnne, live with their seven children in southeast Salt Lake County. Lu, with Bruce's "all too infrequent assistance," herds their children to and from baseball, basketball, soccer, golf, dance, piano, and Scouts. Their "only law school baby" will be joining the driving pool next spring. While Lu has held positions in "every Church auxiliary," Bruce has held positions in

priesthood quorums, the stake mission presidency, and stake high council.

**Jeffrey W. Shields, 1983**

Following graduation, Jeff pursued a litigation practice for several years in the Orange County office of McKenna, Conner & Cuneo. In February 1988 he left that firm when his Orange County office merged with Morrison & Foerster. Currently, as a partner in Morrison & Foerster's Tokyo Office, Jeff specializes in international litigation and dispute resolution. He is fluent in Japanese and is applying to become a Japanese foreign-certified attorney (Gaikokuho-jimu-bengoshi). He is now serving as a high counselor in the Tokyo South Stake

**G. Kevin Jones, 1977**

Kevin has spent his judicial fellowship with the United States Supreme Court working with the Federal Courts Study Committee Chief Justice Rehnquist selected the 15-member committee (of which Rex Lee is a member) to explore ways to improve the nation's federal judicial system. One of the committee's most significant recommendations is a proposed four-year experiment allowing the Supreme Court to assign cases involving conflicting interpretations of federal law to a neutral court of appeals for resolution. The court of appeals' decision would be binding nationally, but the Supreme Court would still retain the option to hear the case. Kevin was assigned to assist the committee in its research, in drafting its proposals, and in communicating its ideas to various parts of the judicial system. Before accepting his

judicial fellowship, Kevin worked as a senior attorney advisor for the Interior Department in Salt Lake City. During his years in Salt Lake, he found time to earn his LL.M in energy law at the University of Utah and to write several law review articles. He continues to write for legal journals, and in May of this year he received his SJD from the University of Virginia School of Law.

**L. Reid Ivins, 1976**

Although he still counts winning the Law School tennis, golf, and ping pong tournaments two years running as his greatest achievements, Reid has continued his remarkable career in the intervening years. Before coming to BYU, Reid had already graduated from George Washington University, the Harvard program for military management, Air Command and Staff College, Squadron Officer's School, Fighter Weapons School, combat crew training, and pilot training. He had also been an aviation cadet in the Korean War, a pilot for a year in Vietnam, a tactical officer in Europe, and had spent four years in the Pentagon. Immediately before coming to BYU, Reid was a Lt. Colonel in the U.S. Southern Command in Panama. After graduating with JRCLS's charter class, Reid formed a new law firm with two of his classmates: Howard Maetani and Bill Burk; with offices in Provo and Heber. After seven years of successful practice with his firm, he began serving as legal counsel to Congressman Howard C. Nielson. Reid is currently Howard Neilson's

chief of staff. He is also serving as first assistant to the high priest group leader in his Arlington ward. He and his wife, Ana Marie ("Nani"), are the proud parents of four. "Success in life," Reid says, "is having raised your kids and seeing them all do well." He is still playing tennis regularly.



**Pamela B. Hunsaker, 1988**

As her classmates may recall, Pam had her first child (Christopher) the week before graduation. She then took advantage of her unemployment status to spend the summer at home with her baby. In mid-August she accepted a position with Holme Roberts & Owen in Salt Lake City. Having opted for a "staff" position, she was able to "limit" her workdays to Mondays through Fridays from 8 to 5.

In October of 1989, Pam accepted a permanent position with Judge David Sam of the United States District Court, District of Utah, as one of his law clerks. She and Art had their second child on August 20, 1990. After maternity leave she will return to work part-time—in government parlance that means 20 hours per week—having arranged to job share the law clerk

position with Mitzi Roberts Collins, a 1987 JRCLS graduate.

**Tadiana R. Walton, 1987**

After graduation Tadiana clerked two years for Judge Charles E. Hardy of the United States District Court for Arizona. Her noteworthy activities included assisting Judge Hardy in drafting model criminal jury instructions for the Ninth Circuit and traveling to such exotic lands as Tucson, Flagstaff, and Prescott, Arizona. Despite predictions that she would soon forget everything she learned in law school, she waited a year after graduation to take the bar. Tadiana surprised herself and "astonished" all others by scoring the highest of the 600 people that took that exam. In October 1989 she joined Lewis and Roca, a 130-lawyer firm in Phoenix, where she continues to practice in corporate law and in securities, "with occasional detours into insurance and medical matters." Since January 1989, Tadiana has served as Relief Society president in her Mesa single adults ward.

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*The Clark Memorandum welcomes letters to the editor, articles, updates on job changes, etc. Send your material to Clark Memorandum, 338 JRCLB, Provo, Utah 84602.*

J. Reuben Clark Law Society  
J. Reuben Clark Law School  
Brigham Young University