


Fall 1995

Clark Memorandum: Fall 1995

J. Reuben Clark Law Society

J. Reuben Clark Law School

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A white dove is captured in flight, moving from the left side of the frame towards the right. The bird's wings are spread wide, and its tail feathers are visible. The background is a textured, mottled brown color, giving the impression of a wall or a canvas. The lighting is soft, highlighting the white feathers of the dove.

CLARK

MEMORANDUM

BRIGHAM
YOUNG
UNIVERSITY

J. REUBEN
CLARK LAW
SCHOOL

FALL
1995

H. Reese Hansen
Dean

Scott W. Cameron
Editor

Charles D. Cranney
Associate Editor

Linda A. Sullivan
Art Director

John Snyder
Photographer

Joyce Janetski
Assistant Editor

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FALL 1995

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Cover Photograph
John Rees



Soldiers *of* *the* Spirit

BY ELDER LANCE B. WICKMAN

L

ast Friday, I was talking with a dear friend and professional colleague of mine, a retired judge of the San Diego Superior Court and the California Court of Appeals, who is of counsel to our law firm, a man for whom I have both affection and high regard. I told him that I was going to be speaking to students at the BYU Law School this evening. “What is your subject?” he inquired. “Ethics,” I briefly replied. “Oh,” he said with a twinkle in his eye, “Do you know anything about it?” · A sobering question! My dear friends, I can tell you this—whatever I may know about this subject, particularly

This address
was given at the
J. Reuben Clark
Law School Fireside
March 12, 1995

PHOTOGRAPHY BY JOHN REES

as it relates to the practice of law as a Latter-day Saint, I have learned not so much in classroom or courtroom as in the silent chambers of the soul in coming to grips with a thousand, nay, a thousand thousand, decisions great and small in the daily course of attempting to practice my religion and my profession at the same time—in coming to understand what it means to be a *Latter-day Saint lawyer*. Do I know anything about it? Well, I will let you be the judge of what I know after you have heard what I have to say. My prayer has been, and is, only that if there is anything of intrinsic merit in what I say that it will be evident and thus of lasting value to you.

It was almost a year ago that my life changed dramatically. I was sitting in my law office in San Diego at noon a few days before April conference when the telephone rang. The voice on the other end was President Gordon B. Hinckley inviting my wife, Pat, and me to meet with him the following day. A very unsettling 27 hours followed. Then, as we sat with the president, he extended this special call to serve as a member of the Second Quorum of the Seventy. But, he explained, my service would not be full-time. I would continue to live in San Diego and practice law. I would serve as a member of the presidency of the North America West Area, which encompasses California and Hawaii (a tough assignment, but someone has to do it!).

Thus began a new phase of life—a life of being alternately “law man” and “church man.” When I returned from general conference, I encountered one of our regional representatives, who is also a lawyer. Another lawyer in his firm and I had been on opposite sides of a lawsuit. Good-naturedly, he said, “Does this [my new call] mean that we have to give up now?!” Well, I gave him the only answer that any lawyer worthy of his hourly rate could give: “Of course, it does!” The question was intended, and received, in good humor, but it highlights indirectly a question that lingers in the mind of every Latter-day Saint lawyer (indeed in the mind of every lawyer of integrity) who daily witnesses the contentious, often strident, world of law: How do I conform my professional life with my private life? Am I the same man or woman in my work-day activity that I am in my ecclesiastical activity? Can I be?

Happily, I can say categorically that the answer to that question is “yes.” I have learned that it really is true that “no man can serve two masters.” I have also learned that the profession of law does not require him to do so. I have learned that the lawyer’s enemy is not his profession but rather the arrogance that all too often infects those who come into it. Hence, I would like to begin by saying something about this occupational hazard and its antidote. From there, I wish to proceed to share a thought or two about what it means to be both a Latter-day Saint and a lawyer.

The scriptures, as always, provide profound insight. With his new found missionary companion, Amulek, Alma went forth among the people of the wicked city, Ammonihah, to preach the gospel. Evidently, the lawyers

and judges of Ammonihah were among those chiefly responsible for the wickedness of the people. Alma and Amulek preached in fervent testimony to touch their hearts, but the Book of Mormon account records:

Nevertheless, there were some among them who thought to question them, that by their cunning devices they might catch them in their words, that they might find witness against them, that they might deliver them to their judges, that they might be judged according to the law, . . .

Now it was those men who sought to destroy them, who were lawyers, *who were hired or appointed by the people to administer the law at their times of trials, or at the trials of the crimes of the people before the judges.*

Now these lawyers were learned in all the arts and cunning of the people; and this was to enable them that they might be skilful in their profession.

And it came to pass that they began to question Amulek, that thereby they might make him cross his words, or contradict the words which he should speak. [Alma 10:13–16; emphasis added]

The ensuing discussion between Alma and Amulek and these lawyers, including one in particular named Zeezrom, illustrates the two most common manifestations of lawyer arrogance: the arrogance of power, or manipulative behavior, and the arrogance of sophistry, or what I call the arrogance of being clever.

The first of these, the arrogance of power, or manipulative behavior, stems from the enormous influence that a lawyer potentially wields simply because he knows “the system.” It is the unprincipled use of a lawyer’s knowledge of law and the legal system to manipulate others to his own selfish end that is the arrogance of power. The following exchange between Amulek and some of his listeners illustrates this evil:

And now behold, I say unto you that the foundation of the destruction of this people is beginning to be laid by the unrighteousness of your lawyers and your judges.

And now it came to pass that when Amulek had spoken these words the people cried out against him, saying: Now we know that this man is a child of the devil, for he hath lied unto us; for he hath spoken against our law. Now he says that he has not spoken against it.

And again, he has reviled against our lawyers, and our judges.

And it came to pass that the lawyers put it into their hearts that they should remember these things against him. [Alma 10: 27–30; emphasis added]

The lawyers put it into the people’s hearts that Amulek was purportedly undermining their system of laws when the opposite was true. The manipulations of the lawyers themselves were the enemy to the people. Sadly, this phenomenon is all too present in the conduct of some lawyers today. It is manifest not only in some who attain high political office, which they then attempt to bend to their own purposes, but

it is also found in the super-aggressive antics of a few practitioners who seek to use their skill to bully and browbeat opponents to obtain an advantage, unfairly, for their clients. This arrogant manipulative behavior is widespread. Occasionally (but not often enough, in my opinion), the courts themselves will step in and pointedly slap the hands of those who engage in such practices. In *Paramount Communications v. QVC Network*, 637 A. 2d 34 (1993), the Supreme Court of Delaware quotes an extended excerpt from a deposition in which one lawyer crossed the line of propriety and collegiality. He was rude, insulting, and obstructing in his conduct, all in an effort to cow his opponent. In stating its intention not to allow this particular lawyer (from another state) to make future appearances in Delaware courts absent a showing of good cause, the court said:

And there was one among them whose name was Zeezrom. Now he was the foremost to accuse Amulek and Alma, he being one of the most expert among them, having much business to do among the people. . . .

And this Zeezrom began to question Amulek, saying: Will ye answer me a few questions which I shall ask you? Now Zeezrom was a man who was expert in the devices of the devil, that he might destroy that which was good; therefore, he said unto Amulek: Will ye answer the questions which shall be put unto you? [Alma 10:31; 11:21]

Throughout chapter 11 Zeezrom attempts, unsuccessfully, to hoodwink Amulek by putting clever questions to him—foolishly elementary questions from one presumably schooled in the teachings of the prophets—such as: “Is

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Staunch advocacy on behalf of a client is proper and fully consistent with the finest effectuation of skill and professionalism. Indeed, it is a mark of professionalism, not weakness, for a lawyer zealously and firmly to protect and pursue a client's legitimate interest by a professional, courteous, and civil attitude toward all persons involved in the litigation process. A lawyer who engages in the type of behavior exemplified by Mr. [X] on the record of the [Y] deposition is not properly representing his client, and the client's cause is not advanced by a lawyer who engages in unprofessional conduct of this nature. [Id., at 54]

Such behavior is one of the reasons that many lay people are less than complimentary about lawyers. But there is another reason, and more widespread, and that is the arrogance of sophistry.

The arrogance of lawyer sophistry—of being clever—is also illustrated in the tenth and eleventh chapters of Alma.

there more than one God?” “How knowest thou these things?” “Who is he that shall come?” “Is it the Son of God?” “Shall he save his people in their sins?”

Then, puffed up in his self-congratulatory prowess as a cross-examiner, Zeezrom said unto the people:

See that you remember these things [referring to Amulek's answers]; for he said there is but one God; yet he saith that the son of God shall come, but he shall not save his people—as though he had authority to command God. [Alma 11:35]

But, as so often happens with arrogant people, Zeezrom's inflated ego obscured his vision. He failed to see that his foolish questions had only provided Amulek an opportunity for teaching some very fundamental doctrine concerning the redemptive power of Christ and the reality of an ultimate resurrection and judgment. In marked contrast to Zeezrom, Amulek was filled with the Spirit and with a fundamental

integrity and honesty that forcefully turned back Zeezrom's shallow intellectual questioning, confounding him. Amulek punctured Zeezrom's fragile bubble of self-importance—of cleverness. To his credit, Zeezrom changed his ways.

But Zeezrom is not the only scriptural example of a lawyer inflated by his own cleverness. Once the Savior was approached by a "certain lawyer," as he is described by Luke, who also fancied himself as clever. Seeking to tempt the Savior, he asked, "Master, what shall I do to inherit eternal life?" In the right context, the question is both profound and important. It is a question asked sooner or later by every honest truth seeker. But this lawyer's interest in the answer was pretended; his purpose was not truth but treachery. His question was also foolishly elementary for one schooled in the law. Jesus said: "What is written in the law? how readest thou?" The lawyer responded, "Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy strength, and with all thy mind; and thy neighbor as thyself." The answer was a good one, but in so readily giving it the lawyer revealed the transparent insincerity—the sophistry, the attempt at cleverness—in his question. Jesus' divine mastery of the encounter is revealed in the simplicity of his response: "Thou hast answered right: this do, and thou shalt live" (See Luke 10:25–28).

And then Luke, to whom we are indebted for the record of this episode, provides this penetrating insight. Referring to the lawyer, he said: "But he, willing to justify himself . . ." The lawyer's true motive was exposed; he sought to justify himself. His purpose in asking the question about eternal life was vain self-aggrandizement. Outwitted, his motive of self-justification was even more evident. "But he, willing to justify himself, said unto Jesus, And who is my neighbor?" The Savior then taught the beautiful parable of the Good Samaritan—the story of one

who, in marked contrast to this lawyer, was motivated by selfless service, not selfish posturing (Id., verses 29–37).

But lest the judgments of sacred writ be left unbalanced on the matter of lawyers, Mark offers a glimmer of hope for those following the profession of the law.

And one of the scribes [lawyers] came, and having heard them reasoning together, and perceiving that he [the Savior] had answered them [some Sadducees] well, asked him, Which is the first commandment of all?

And Jesus answered him, The first of all the commandments is, Hear, O Israel; the Lord our God is one Lord.

And thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind, and with all thy strength: this is the first commandment.

And the second is like, namely this, Thou shalt love thy neighbor as thyself. There is none other commandment greater than these. [Mark 12:28–31]

Note how similar on the face of the written text are the two interviews with lawyers—one recorded by Luke and the other by Mark—similar at least to this point. However, note the difference in the response of this lawyer:

And the scribe said unto him, Well, Master, thou hast said the truth: for there is one God; and there is none other but he:

And to love him with all the heart, and with all the understanding, and with all the soul, and with

all the strength, and to love his neighbor as himself, is more than all whole burnt offerings and sacrifices. [Id., verses 32–33]

This man sought no self-justification. He sought not to be clever or self-promoting. His dialogue was honest, sincere. The integrity of his soul is revealed in his earnest response to the



“ The decided are
always gentle.”

—JUDGE LOUIS WELCH

Savior's answer. In the words of the Gospel writer, "he answered discreetly."

"And when Jesus saw that he answered discreetly, he said unto him, Thou art not far from the kingdom of God" (Id., verse 34; emphasis added).

The difference between these two lawyers was not so much in their questions as in their attitude. One spoke "discreetly," that is to say sincerely and without sophistry. And of him the Master said, "Thou art not far from the kingdom of God."

Nonetheless, to underscore the Savior's mastery of any and all who sought to embarrass or condemn him through their sophistry and cleverness, Mark concludes his account of the incident with this telling epitaph, "And no man after that durst ask him any question" (Id.).

What accounted for the Savior's mastery over his interrogators? To answer that he was the Christ merely begs the question. For then one must ask, What are the qualities that made him the Christ? Discovering those, one will unlock the door to success in law and happiness in living. One thing is patently obvious (and worthy of emulation by every would-be lawyer): He knew the law—"The Law." He was a master of *The Law*. Faced with lawyers' questions, he turned to *The Law* for the answer. In each case, faced with a question from one who was expected to know the law, Jesus responded by asking him to state the rule, albeit a rule of ecclesiastical law. It was his mastery of the system of rules we call *The Law* that enabled the Master to engage in persuasive conversation. There is a lesson here for each of us. In the profession of law there is no substitute for knowing *The Law*.

But there was something else, something much more important, something divine in Jesus' handling of these situations. And that "something" is the special blend of personal qualities that comprised his character. Luke uses a single word to describe that blend of qualities: *Virtue*.

And he came down with them, and stood in the plain, and the company of his disciples, and a great multitude of people out of all Judea and Jerusalem, and from the sea coast of Tyre and Sidon, which came to hear him, and to be healed of their diseases;

And they that were vexed with unclean spirits; and they were healed.

And the whole multitude sought to touch him: for there went virtue out of him, and healed them all. [Luke 6:17-19; emphasis added]

And a woman having an issue of blood twelve years, which had spent all her living upon physicians, neither could be healed of any,

Came behind him, and touched the border of his garment: and immediately her issue of blood stanch'd.

And Jesus said, Who touched me? When all denied, Peter and they that were with him said, Master, the multitude throng thee and press thee, and sayest thou, Who touched me?

And Jesus said, Somebody hath touched me: for I perceive that virtue is gone out of me. . . .

And he said unto her, Daughter, be of good comfort: thy faith hath made thee whole; go in peace. [Luke 8:43-46, 48; emphasis added]

Christ's virtue was honed and developed to the point that it was palpable. It could literally be felt by him and by others. It was, plain and simple, *power*.

Recently, in a meeting of the Quorums of Seventy, Elder Carlos Asay of the presidency of the Seventy gave a marvelous presentation, which he entitled "Cherish Virtue." Elder Asay said concerning the Savior:

Not only was he endowed with godly powers inherited from his Heavenly Father, but he also possessed the powers and strength that come from living a sinless life. He was the epitome of morality, manliness, and goodness. Hence, he had the power or virtue to cast out devils, heal the sick, raise people from the grave [and, we might add, contend with sophists] and do other marvelous and miraculous things. And, he could even discern the flow of virtue from his body when people of faith touched his garments as he passed by them. [Elder Carlos E. Asay, "Cherish Virtue," p. 2]

Elder Asay pointed out that "the Greek translation of the word *virtue* is power or strength" (Id.). Brigham Young defined virtue (or power) as doing the will of our Father in Heaven:

*That is the only virtue I wish to know. I do not recognize any other virtue than to do what the Lord Almighty requires of me from day to day. In this sense virtue embraces all good; it branches out into every avenue of mortal life, passes through the ranks of the sanctified in heaven, and makes its throne in the breast of Deity. When God commands the people, let them obey. [Brigham Young, *Journal of Discourses*, Vol. 2, p. 123]*

Elder Asay, after quoting Brother Brigham, then made this telling observation:

"Elder Nelson pointed out to me that one of the two words in the Greek New Testament (*dunamis*), translated as virtue in English, appears 120 times. Of those 120 times, it is translated as *power* 77 times" (Asay, p. 3).

Virtue is power! Virtue has a power, an influence, that is, quite literally, matchless. The Book of Mormon contains this profound insight:

And now, as the preaching of the word had a great tendency to lead the people to do that which was just—yea, it had had more powerful effect upon the minds of the people than the sword, or anything else, which had happened unto them—therefore, Alma thought it was expedient that they should try the virtue of the word of God. [Alma 31:5; emphasis added]

The example and teachings of Christ illustrate that axiom of life. It is manifest in his brief interviews with the two lawyers. It is evident in Amulek's mastery of Zeezrom. And it is evident in the lives of virtuous men and women in the legal

profession. The truly great ones are unfailingly people of honesty, integrity, decency and courtesy—and in that virtue they are also men and women of great power and influence.

A few years ago, I was asked to sit on a select committee of the San Diego County Bar Association. The committee was composed of a few practitioners and judges from the state and federal courts, trial and appellate. Our charter was to fashion the Litigation Code of Conduct, a set of guidelines that would go beyond the basic Rules of Professional Conduct and canonize collegiality and fair play fundamentals that ought to characterize the behavior of officers of the court. Here are a few excerpts from the code we drafted (which incidentally has now been adopted by a number of courts):

Lawyers should honor their commitments.

Lawyers should uphold the integrity of our system of justice.

Lawyers should not compromise their integrity for the sake of a client, case or cause.

Lawyers should conduct themselves in a professional manner.

Lawyers should be guided by a fundamental sense of fair play.

Lawyers should be courteous and respectful to the court.

Lawyers must remember that conflicts with opposing counsel are professional and not personal—vigorous advocacy is not inconsistent with professional courtesy.

Lawyers should not be influenced by ill feelings or anger between clients.

Lawyers should discourage and decline to participate in litigation that is without merit or is designed primarily to harass or drain the financial resources of the opposing party.

That last one calls to mind the words of Abraham Lincoln, written in July 1850, and contained in his “Notes for a Law Lecture”:

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.

Never stir up litigation. A worse man can scarcely be found than one who does this. [The Collected Works of Abraham Lincoln, The Abraham Lincoln Association, Springfield, Ill., Rutgers University Press, 1953, Vol. II, p. 81]

My favorite rule from our Litigation Code of Conduct is the very last one: “Lawyers should conduct themselves so that they may conclude each case with a handshake with the opposing lawyer.” To me, that one embodies all of the others and is the quintessence of the virtuous lawyer. Think of the difference in the public perception of lawyers if our entire profession embraced these basic precepts of decency and virtue! You and I cannot change the whole profession, and we probably are not going to make a wholesale difference in public perceptions. But each of us can decide what kind of lawyer he or she is going to be. Again, it was the great Lincoln who put his finger on it:

There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. Let no young man choosing the law for a calling for a moment yield to the popular belief—resolve to be honest at all events; and if in your judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave. [Id., p. 82.]

When our bar association committee finished our work, we recommended to the association that an annual award be established honoring the trial lawyer best exemplifying the




credo: “His word is his bond”—an award honoring both professional excellence and personal virtue. This recommendation was accepted, and the award was established. One of the first selected to receive the award is a good friend of mine and an outstanding civil trial lawyer. I attended the banquet where this award was presented to him. It was a lovely affair; several wonderful tributes were paid to this good man by his colleagues, both partners and opponents. All were universally complimentary. The moment came for him to receive the award. He came forward, and in receiving it, said in substance:

When I was a young lawyer, just starting out, I was anxious to know what it takes to be a successful courtroom attorney. So I went to Judge [Louis] Welch [now retired from the San Diego Superior Court] and asked him that question. He answered me with five words that I have tried to live by. He said, “The decided are always gentle.”

The decided are always gentle. What a wonderful philosophy! The Savior was “decided.” He knew where he stood. He knew The Law. More importantly, he had a firm grip on his moral compass. (As Elder Neal A. Maxwell has said, “His grip upon himself is our grip upon eternity.”) His character was perfectly intact. He was a man of *virtue*. As with the Master, so with every person who knows where he stands. Truly, there is a gentility and strength about the “decided.” The great ones are consummate professionals—unfailingly gracious and awesome adversaries! The decided are always gentle.

But, there is more. We, you and I, have a special charge. As Latter-day Saints, we have a greater charge than merely being true to a moral code. We are the custodians of the Restoration, the gospel of Jesus Christ. We are more than just



Our lives must
be in personal and
professional dimension
a seamless fabric of
virtue and service.

lawyers; *we are Latter-day Saint lawyers.* By virtue of the priesthood and our Church membership, as well as our professional membership, ours is a dual obligation. We have an affirmative obligation to use our legal training to make a difference. In his presentation to the Seventy, Elder Asay quoted from *The White Company* by A. Conan Doyle. Said he:

In one of my favorite books, there is an interesting conversation between a young man who seemed destined to become a monk and a young lady who had fallen in love with him. The young man, in a moment of despair, exclaimed:

“God help me! I am the weakest of the weak,” groaned Alleyne. “I pray that I may have more strength.”

“And to what end?” she asked sharply. “If you are, as I understand, to shut yourself forever in your cell within the four walls of the abbey, then of what use would it be were your prayer to be answered.”

“The use of my own salvation.”

She turned from him with a pretty shrug and wave. “Is that all?” she asked. “Then you are no better than Father Christopher and the rest of them. Your own, your own, even your own! My father is the king’s man, and when he rides into the press of the fight he is not thinking ever of the saving of his own poor body; he reck little enough if he leaves it on the field. Why then should you, who are soldiers of the Spirit, be ever moping or hiding in cell or cave, with minds full of your own concerns, while the world, which you should be mending, is going its way, and neither sees nor hears you? Were ye all as thoughtless of your own souls as the soldier is of his body, ye would be of more avail to the souls of others?”

“There is [truth] in what you say, lady,” Alleyne answered; “and yet I scarce can see what you would have the clergy and the church to do.”

*“I would have them live as others and do men’s work in the world, preaching by their lives rather than their words. I would have them come forth from their lonely places, mix with [society], feel the pains and the pleasures, the cares and the rewards, the temptings and the stirrings of the common people. Let them toil and sweat, and labor, and plough the land, and take wives to themselves. . . . I have learned . . . by looking from my own chamber window and marking these poor monks of the priory, their weary life, their profitless round. I have asked myself if the best which can be done with virtue is to shut it within high walls as though it were some savage creature. If the good will lock themselves up, and if the wicked will still wander free, then alas for the world. [“The White Company,” *The Works of A. Conan Doyle* (Roslyn, New York: Black’s Readers Service Company, n.d.), p. 222; quoted in “Cherish Virtue,” Carlos E. Asay, pp. 5–6; emphasis added]*

Alas, indeed! We here tonight are bound together by dual bonds. We are students of *The Law*. We are Latter-day Saints. The marriage of these two distinctive characteristics in each of us should raise us to high-minded purpose in our professional pursuits. For us, the law must never be a lever of manipulation or a vehicle for self-promotion through clever sophistry. But neither can we take our law degrees and, like poor monks of the priory, “lock ourselves up,” as it were, and content ourselves with using our special training exclusively for our own selfish ends—“profitless rounds.” Our lives must be in personal and professional dimension a seamless fabric of virtue and service. *We are soldiers of the Spirit!* May we be men and women of virtue and valor, not locked up in ourselves but using our virtue and our professional skill to contend with evil and benefit others. In our professional and personal pursuits, may it be said of us by the Master of all as he said of the ancient scribe, “Thou art not far from the Kingdom of God.”

Elder Lance B. Wickman is a member of the Quorum of Seventy of The Church of Jesus Christ of Latter-day Saints.

THE PROFESSION EVERYONE LOVES TO HATE

by James D. Gordon III¹

I am a member of a profession that the public loves to hate. That's why people are always telling me lawyer jokes. I love lawyer jokes, because I love humor. Proverbs 17:22 says, "A merry heart doeth good like a medicine." Here's a lawyer joke: Suppose you're walking down the beach and you come upon Saddam Hussein and a lawyer buried up to their necks in sand. Who do you kick first? Answer: Saddam Hussein. Business before pleasure. People say that's how copper wire was invented: two lawyers fighting over a penny. And a while ago there was a classified ad in the *National Review* that said: "Hate Lawyers? Curse out a live one. 900/773-8245. \$5/min. 18 or older."² • So the public hates lawyers. My first response is: What does the public know? Studies show that one-third of the public suffers from some kind of severe mental disorder. So look at the people on each side of you. If they look normal to you, then you're the one. • The public is not entirely wrong. It's true that some lawyers are dishonest, arrogant, venal, amoral, ruthless buckets of toxic slime. On the other hand, it's unfair to judge the entire profession by five or six hundred thousand bad apples. • Animosity toward lawyers is deeply seated in our tradition. Joseph Smith said that we should "send every lawyer as soon as he repents and obeys the ordinances of heaven, to preach the Gospel to the destitute, without purse or scrip."³ Brigham Young once described a city in a stake of Zion conducted after the order of Enoch. He asked, "Do you think we shall want any lawyers in our society? No, I think not. Do you not think they will howl around? Yes, you will hear their howls going up morning and evening, bewailing one another. They will howl, 'We can get no lawsuits here; we cannot find anybody that will quarrel with his neighbor. What shall we do?'. . . Not but that lawyers are good in their place; but where is their place? I cannot find it."⁴ • Today I will address five complaints that the public makes against lawyers. First, lawyers defend guilty people. Second, as a class lawyers are dishonest and immoral. Third, lawyers are too interested in money.

Illustrations by Robert Neubecker



NEUBERGER

Fourth, there are too many lawyers, and they are filing too many lawsuits and ruining our economy. And fifth, the legal system is seriously flawed. Because of these complaints, if you announce that you intend to go to law school, your grandparents might scrape off their bumper sticker that says, "Ask me about my grandchildren." I will address each of these five complaints in turn.

First, lawyers represent guilty people. This raises the issue of how the public knows that the defendant is guilty. Usually, the public makes the decision based on the media reports. Strangely enough, the public also deeply distrusts the media, which creates a puzzling logical conundrum. The framers of the Constitution knew that the public has a tendency to decide guilt or innocence based on media accounts. That's one reason that the framers gave us the Bill of Rights, which provides for a fair trial to decide questions of guilt and innocence, and does not relegate the fate of accused persons to the tribunal of public opinion.

The alternative is that no one should represent guilty people. Or, lawyers should only go through the motions, but not really try to protect the constitutional rights of the accused. The framers decided instead that every person, guilty or innocent, should have the right to counsel. They believed that without counsel accused persons cannot protect themselves against the awesome power of the state, or the prejudices of the majority, who control the machinery of the state. They believed that the effective representation of counsel was essential to the proper working of the criminal justice system. It is part of what makes us a free people.

The history of the Latter-day Saints helps illustrate this point. On June 23, 1843, the Prophet Joseph Smith was arrested in Illinois by Sheriff Reynolds of Jackson County, Missouri, and another person. The charge was treason against the state of Missouri. In the Prophet's words,

[B]oth of them presented cocked pistols to my breast, without showing any writ or serving any process. Reynolds cried out,

"[Expletive deleted], if you stir I'll shoot. . . ." I answered, "I am not afraid of your shooting; I am not afraid to die." I then bared my breast and told them to shoot away. . . .

They then hurried me off, put me in a wagon without serving any process, and were for hurrying me off without letting me see or bid farewell to my family or friends. . . . I then said, "Gentlemen, if you have any legal process, I wish to obtain a writ of habeas corpus," and was answered,—"[Expletive deleted], you shan't have one." They still continued their punching me on both sides with their pistols.

. . . The officers held their pistols with muzzles jamming into my side for more than eight miles, and they only desisted on being reproached by [Stephen] Markham for their cowardice in so brutally ill-treating an unarmed, defenseless prisoner. On arriving at the house of Mr. McKennie, the tavern-keeper, I was thrust into a room and guarded there, without being allowed to see anybody. . . .

I again stated to Reynolds, "I wish to get counsel," when he answered, "[Expletive deleted], you shan't have counsel: one word more, [expletive deleted], and I'll shoot you." . . . I saw a person passing and shouted to him through the window, "I am falsely imprisoned here, and I want a lawyer."⁵

Ultimately Joseph was able to obtain legal counsel, and he obtained a writ of habeas corpus, which resulted in his freedom. One year and four days later the Prophet was murdered by a mob at Carthage Jail. If any people believes in due process of law, in protecting the constitutional rights of accused persons, and in the rule of law instead of mob rule, it should be the Latter-day Saints.

Elder Dallin H. Oaks, who practiced law in Chicago, has said,

I need to tell you that the client who gave me the greatest personal satisfaction was a young Polish boy whom the Supreme Court of Illinois appointed me to represent in his appeal to that court. I lost the appeal seven to nothing and acknowledged the result as just. But I had a great deal more satisfaction in helping that young man have due process of law than

I had representing some prestigious but sometimes quite underhanded corporate clients.⁶

The second criticism is that as a class lawyers are dishonest and immoral. It is said that the phrase "honest lawyer" is an oxymoron—self-contradictory phrase—like the phrases "civil war," "professional wrestling," "family vacation," and "reasonable attorney's fee." People believe that lawyers will argue any side of any question for money. Lawyers also argue in the alternative. My favorite example is the lawyer who told the judge, "Your honor, my client was out of town on the day of the murder. And if he wasn't, he was not at the scene of the crime. And if he was, he didn't pull the trigger. And if he did, he's insane."

In fact, it is not true that all lawyers will argue any side of a question for money. The Model Rules of Professional Conduct make clear that a lawyer should exercise independent judgment;⁷ and many clients do come to their lawyers for moral as well as legal advice. Often clients want not merely their lawyers' skill, but also their judgment, and it is my experience that most clients do try to follow their lawyers' moral advice.

Are lawyers less honest than other people? A survey conducted a number of years ago showed that more than a third of Americans believed that most lawyers would engage in unethical or illegal activities to help a client in an important case.⁸ However, seven out of eight of those who had used legal services gave their own lawyers high marks for honesty.⁹ I think that the difference in responses is significant.

My own experience in law practice led me to conclude that most lawyers are honest. Lawyers face disciplinary action for dishonesty. Elder Oaks has observed, "In our society the members of many groups are notable for lying, but none is punished more severely than lawyers. What is unique about lawyer lying is not that it is more widespread or more important than the lying of members of other groups, but that it is more severely condemned and more severely punished."¹⁰

In addition, lawyers are repeat players in the legal community. They have to make representations of fact to other lawyers and judges nearly every working day of their lives. In order to get their work done, it is essential that they have a reputation for honesty. If they lie, their reputation for dishonesty will quickly spread among their peers. It comes as a surprise to many people that the legal system depends so heavily on trust, but it is true.

One of my favorite examples of a lawyer's integrity involves Elder Dallin H. Oaks. As a young lawyer he was attending the deposition of an employee of one of his firm's corporate clients. The witness began to lie under oath. Dallin Oaks got on the phone to the man's employer and said, "Either you get somebody down here who is going to tell the truth, or you get yourself another lawyer." Good lawyers have that kind of moral backbone.

According to a public opinion poll, nearly a third of Americans believe that lawyers are too interested in money.¹¹ Some lawyers are. I believe that seeking wealth is a poor reason to go into law. Let me tell you about an experience that I had. When I was in law practice, my law firm had a car-leasing program in which each person received a very generous allowance for leasing a car. If you chose not to lease an expensive car, you simply forfeited part of the car allowance. So I went out and leased a beautiful sports car.

The car was the nicest toy I ever owned. It was superbly engineered, and it drove like a dream. When the turbo kicked in, the car would flatten your ears back against the headrest. A voice would tell you when the door was open or the fuel level was low. It would say something like, "Left door is ajar, Excellency." The volume control on the stereo went from 1 to 10, and above 10 it had another setting that said: "Liquify Cerebral Cortex." The night I brought the car home, I sat in it until two a.m., trying out all the buttons and gadgets. My wife, Nadine, refused to drive the car; it was too ostentatious.

One year later I left law practice and came to law school to teach. I gave up the sports car and bought a 1970 Valiant. It did not have a turbo-charger; instead, it had a wimpo-charger. There was a picture of my car in the dictionary, next to the definition of "Breach of warranty."



LAWYERS
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THEY MUST
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HOW TO
HEAL IT.

What surprised me is that I did not miss the sports car at all. Oh sure, the car was fun for a few months. However, after the newness wore off, it was simply transportation. You've all had the experience of wanting a certain material thing. You looked forward to getting it, and it was exciting at first.

After a while, however, the thrill wore off, and you began looking forward to acquiring some other material thing, something that was really going to satisfy you. To borrow an image from C. S. Lewis, wealth is like an onion; when you peel off one layer, you simply discover another layer underneath. This process continues until you realize that at the center of the onion there is nothing at all.

In 2 Nephi 9:51, Jacob taught, "Wherefore, do not spend money for that which is of no worth, nor your labor for that which cannot satisfy." Wealth does not satisfy the deepest hungers of the soul; it does not bring joy. Living the gospel brings joy. Serving and loving others bring joy. One of the deepest secrets of life is that we are not here to be served, but to serve.

On this issue I believe that the legal profession has begun to lose its way. It used to be that lawyers didn't worry as much about money. They considered themselves a profession, not a business. However, recently lawyering has become more of a big business. Law firms have begun emphasizing the bottom line and have increased their billing rates accordingly. Firms now require lawyers to work longer hours and to bring in more clients. As a result of this increased mercantilizing of law practice, the job satisfaction of many lawyers has declined in recent years. This materialistic trend parallels broader trends in our society, which generally is becoming more selfish, more greedy, and more acquisitive.

Things used to be different, at least in degree. For example, when I was a young associate my law firm represented 12 couples who were defrauded in an investment scam. As a result of the scam, each couple had a large second mortgage placed on their home. Our job was to prove that these people had been defrauded and to get the second mortgages removed. The litigation was lengthy and costly, and it reached a point where our clients could not afford to pay us any more. A business whose client cannot pay usually makes

the rational economic decision not to provide services to that client. However, that was not how we saw things. We had made a commitment to these people to represent them, and we were going to do it, whether they could pay us or not. We took the case through trial, and we were able to obtain the relief they needed. We considered ourselves to be engaged not merely in economic activity but in something more. That sense is declining in the profession.

The fourth charge, based on accounts in the media, is that there is a litigation explosion in our country. There are too many lawyers, and they are filing too many frivolous lawsuits. It has been alleged that the United States has 70 percent of the world's lawyers, and that litigation is causing the United States to lose its competitive edge in the world economy. One economist asserts that each lawyer costs the nation one million dollars per year in lost gross national product.¹² One tongue-in-cheek solution might be to pay lawyers not to practice law, just as we pay farmers not to grow crops. For example, we could pay each lawyer about \$800,000 a year to stay home, and everybody would be better off!

As usual, there is a gap between the image and the reality. First, the United States does not have 70 percent of the world's lawyers. Calculating the number of lawyers in various countries is difficult, but one scholar has estimated that the United States actually has only 9.4 percent of the world's lawyers.¹³ Second, it is not quite true that people are willing to sue at the drop of a hat. A major study found that only 10 percent of grievances come to the attention of a lawyer, and only 5 percent become filed cases.¹⁴ A Rand Corporation study of people's responses to disabling injuries found that only 2 percent become filed lawsuits.¹⁵

There has been a significant increase in the past thirty years in the frequency of lawsuits. This might be caused by several factors, including changes in the law, greater awareness of legal rights, increased urbanization and economic activity, a declining sense of community, and a greater belief that

society should aid persons injured in accidents.¹⁶ The National Center for State Courts examined the data and found that although there were substantial increases in litigation rates during the late 1970s, any "litigation explosion" peaked in 1981.¹⁷

The media also report frivolous cases, like the case a few years ago in which a child sued because there was no prize in her box of Cracker jacks. We also hear about cases in which juries award apparently outrageous sums of money. A jury has been defined as a group of bright and intelligent people who never read newspapers or watch television. Meanwhile, the rest of us seem to pay for these awards through higher taxes, higher insurance premiums, and higher prices for goods and services. There is some truth to these claims. But, as Mark Twain once said about Wagner's music, it's not as bad as it sounds.

Large jury awards certainly exist, especially in the areas of medical malpractice and products liability, and they drive the averages up.¹⁸ However, the data suggest that, adjusted for inflation, median (or typical) jury awards have increased only slightly over time.¹⁹ (At this point it should be remembered, however, that "data" is Latin for "the plural of anecdote.") The media generally do not report the run-of-the-mill cases; they report the strange, bizarre, and tantalizing cases, and the big verdicts. Suppose for a moment that your principal source of information about the traffic system were the 10 o'clock news. You would probably quickly conclude that the system had very little social utility. You would be correct in concluding that the system had serious problems that needed attention, but the image presented would be a distortion of reality.

The public's fifth complaint is that the legal system is flawed. Indeed it is. Dispute resolution is too expensive, too time-consuming, and too influenced by a disparity in the parties' resources. Effective legal representation is simply out of reach for many Americans. Former Chief Justice Burger said, "To rely on the adversary process as the principal means of resolving conflicting

claims is a mistake that must be corrected."²⁰ He explained, "For some disputes, trials will be the only means, but for many, trials by the adversary contest must in time go the way of the ancient trial by battle and blood. Our system is too costly, too painful, too destructive, too inefficient for a truly civilized people."²¹

Of course, the legal system is not the only institution that is in difficulty. The government, the family, business, health care, education, and other institutions are all experiencing serious challenges. The legal system's problems are complex, and finding real solutions is not easy. Suggestions have been made, and to some degree implemented, like alternative dispute resolution, more legal clinics for low income people, insurance for legal services, requirements to provide pro bono services to the poor, procedural reforms, stricter lawyer discipline, and others. There are many problems, and there is much to be done to improve things.

It's also true that people have positive images of lawyers. For example, people recognize that our nation could not have been founded without the efforts of lawyers like Thomas Jefferson, John Adams, and others. Many of the signers of the Declaration of Independence and about one-half of the signers of the Constitution were lawyers. Abraham Lincoln was a lawyer; Sir Thomas More was a lawyer. Think of some of the lawyers you know, including distinguished people like James E. Faust, Dallin H. Oaks, and Rex E. Lee. Many lawyers serve ably and well; they are clear thinkers and speakers; they stand up for us and speak in our behalf. They also help resolve disputes, and good lawyers do this in a civil, peaceful, and noncontentious manner. These lawyers are to be praised. The Savior said that "he that hath the spirit of contention is not of me."²² He also said, "Blessed are all the peacemakers, for they shall be called the children of God."²³

Recently an American Bar Association task force recommended that law schools emphasize the teaching of values.²⁴ At the J. Reuben Clark Law School we take that responsibility

seriously. Each student is required to take a course in professional ethics, and we make a conscious effort to discuss ethical issues in other classes. We offer professional seminars, which address the integration of religious, moral, and professional values. In the past few years, under the direction of Professor James Backman, we have also established an extensive program in which law students team up with lawyers in the community to provide free legal services to low income, disabled, and elderly people, to Spanish-speaking clients, and to immigrants, as well as to assist with the mediation of disputes outside of court.

Most important is the strong moral compass that our students bring with them, which is the product of powerful and irreplaceable family and religious training. We try to enhance that moral compass while our students are here. As they stay close to the Spirit of the Lord, it will serve them well throughout their lives.

John Tanner²⁵ has brought to my attention a passage in Chaim Potok's novel, *The Chosen*.²⁶ In the book, Reb Saunders, a Hasidic rabbi, had a brilliant son named Danny. Danny had "a mind like a jewel," "like a pearl, like a sun." Reb Saunders explained,

[W]hen my Daniel was four years old, I saw him reading a story from a book. And I was frightened. He did not read the story, he swallowed it, as one swallows food or water. . . . It was a story in a Yiddish book about a poor Jew and his struggles. . . . Ah, how that man suffered! And my Daniel enjoyed the story, he enjoyed the last terrible page, because when he finished it he realized for the first time what a memory he had. He looked at me proudly and told me back the story from memory, and I cried inside my heart. . . . "A mind like this I need for a son? A heart I need for a son, a soul I need for a son, compassion I want from my son, righteousness, mercy, strength to suffer and carry pain, that I want from my son, not a mind without a soul."²⁷

Reb Saunders feared that Danny would have a cold mind, a cruel

mind—proud, haughty, impatient with less brilliant minds, unable to understand pain, indifferent to suffering. Therefore, he imposed upon his son a regimen of silence—he didn't speak to his son—so that Danny could learn of pain and understand the pain of others. In this manner, Reb Saunders hoped to teach Danny to suffer for his people, to take their pain from them, and to carry it on his own shoulders.

Good lawyers must have the skills required for professional competence. But this is not enough. They must know how to carry the burdens of other people on their shoulders. They must know of pain, and how to help heal it. Lawyers can be healers. Bruce Hafen has observed that like physicians, ministers, and other healers, lawyers are persons to whom people open up their innermost secrets when they have suffered or are threatened with serious injury.²⁸ People go to them to be healed, to be made whole, and to be protected from harm.²⁹ These are large and important tasks, and they require all that lawyers have to offer. They require both good minds and good hearts—not only mental acuity and professional skill, but also compassion, righteousness, mercy, and strength to suffer and carry pain. That is what it takes to be a truly good lawyer. And the world desperately needs truly good lawyers.

Notes

¹ Professor of Law, J. Reuben Clark Law School, Brigham Young University. This article was presented as a BYU forum address on May 24, 1994. Apologies and thanks to Craig Griffin, Gary Hill, Jay Leno, Dick Selfridge, Jan Vetter, Kevin Worthen, and others.

² [So Noted], Cal. Law., April 1992, at 19.

³ Joseph Smith, VI *History of the Church of Jesus Christ of Latter-day Saints* 206 (1970 ed.).

⁴ Brigham Young et al., XV *Journal of Discourses* 224 (1967 ed.).

⁵ Joseph Smith, V *History of the Church of Jesus Christ of Latter-day Saints* 340-42 (1970 ed.).

⁶ Elder Dallin H. Oaks, *Bridges*, Clark Memo., Fall 1988, at 10, 15.

⁷ Model Rule of Professional Conduct 2.1 (1983).

⁸ Curran & Spalding, *The Legal Needs of the Public, A Preliminary Report of the ABA Special Committee to Survey Legal Needs* 94, 96 (1974).

⁹ American Bar Association Special Committee to Survey Legal Needs, Responses to Questionnaire, Part IV, Question 40.

¹⁰ Elder Dallin H. Oaks, *Gospel Teachings About Lying*, Clark Memo., Spr. 1994, at 13, 15.

¹¹ *What America Really Thinks About Lawyers*, Nat'l L.J., Aug. 18, 1986, at S-3.

¹² See *An Economist Out To Be Sued*, L.A. Times, Oct. 8, 1990, at D1.

¹³ Ray August, *The Mythical Kingdom of Lawyers*, 78 A.B.A. J., Sept. 1992, at 72.

¹⁴ Richard E. Miller & Austin Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15 Law & Soc'y Rev. 525, 544 (1980-81).

¹⁵ Deborah R. Hensler et. al., *Compensation for Accidental Injuries in the United States* 122 (1991).

¹⁶ See Florida Academic Task Force for Review of the Insurance and Tort Systems, *Fact-Finding Report on Insurance and Tort Systems* 263-308 (1988).

¹⁷ National Center for State Courts, *State Court Caseload Statistics: Annual Report, 1984* 173 (1986).

¹⁸ Florida Academic Task Force for Review of the Insurance and Tort Systems, *Fact-Finding Report on Insurance and Tort Systems* 253-54 (1988).

¹⁹ Michael J. Saks, *Do We Really Know Anything About the Behavior of the Tort Litigation System—and Why Not?*, 140 Pa. L. Rev. 1147, 1241-54 (1992).

²⁰ Warren E. Burger, *The State of Justice*, 70 A.B.A. J., Apr. 1984, at 62, 66.

²¹ *Id.*

²² 3 Ne. 11:29.

²³ 3 Ne. 12:9.

²⁴ American Bar Association Task Force on Law Schools and the Profession: Narrowing the Gap, *Legal Education and Professional Development—An Educational Continuum* 233-72 (1992).

²⁵ John S. Tanner, *Not a Mind Without a Soul*, 45 BYU Today, Mar. 1991, at 26, 44.

²⁶ Chaim Potok, *The Chosen* (1967).

²⁷ *Id.* at 264-65.

²⁸ Bruce C. Hafen, *To Beginning Law Students on "Professionalism"* 5 (unpublished manuscript).

²⁹ See *id.*



GALL

SELECTED LETTERS

P A **1** R T

here was only one Woody Deem.

Everyone I know thought of him as what the Japanese call "a national treasure." He had a sometimes gruff exterior, but it was all a pose. I remember one orientation when the faculty sat in the front row, and each stood in turn to be introduced to the new students. Woody stood, turned to face the audience, scowled, and sat down.

- *The law school has had a few characters. Monroe McKay was known to lie on the floor during faculty meetings and declare his opinions with a voice from over there behind the chairs. He appeared in class on one of those first Halloweens as *The Great Pumpkin*, his round orange outfit stuffed with paper. This is the man who became a federal Court of Appeals judge? There is Jim Gordon, who does stand-up comedy and a Masked Marvel shtick at school and publishes articles and books people read mostly for the footnotes and the aside*

And then there was Woody Deem, who rarely told a joke but was everybody's straight man. His boots, diet, and mock-serious manner were grist for teasing. ● My team-teaching *Criminal Trial Practice* with him 20 times was a highlight of my 41-year academic career. Woody was knowledgeable, experienced, enthusiastic—and he definitely had a flair. We played *Mutt and Jeff*; he was the over-bearing prosecutor and I the advocate for the defense. Whatever the students may have got out of the dialogue, we had fun. ● Woody came to school one day well along in fall semester 1984 and announced that his doctor had said, "You've taught your last class." I taught his remaining *Criminal Law* classes and finished *Criminal Trial Practice* alone, but it was certainly not the same without Woody. ● Woody and Norrie moved to St. George for his last several years as he declined. New generations of students have come and gone, vaguely if at all aware of what they had missed. By now half of our graduates have spent their years here cheated of a chance to know one of the great souls. ● Perhaps you think I am waxing sentimental, and I don't dispute it. But I have missed Woody this past decade and wish students had all had a chance to know him. A few years ago the Law School published "*Criminals Are Stupid*" as a tribute to Woody. It included many of the sort of stories Woody delighted to tell his classes about the impressive stupidity of some criminals. ● Woody was born in 1913 in Salt Lake City and grew up in North Ogden. From childhood he hoped to be a lawyer. After he finished two years at Weber College, his family moved to California, where he graduated from Occidental College at the top of his class in 1936. ● Recently Lorene Barker gave me a trove of letters that Woody had written to her in his young-adult years—a dozen substantial letters and several shorter notes that show his fluency, intelligence, and wit. ● The letters, written to a friend in Ogden, begin when Woody was just 21 and a student at Occidental. He wrote about his college experience—friends, academic success, a rich friend who took him to fancy parties "where I'm distinctly out of place," joining a fraternity, travel with the debate team, banter with faculty and fellow students, dating, and church activity. ● The letters, 1934 through 1939, reflect *The Great Depression*, but demonstrate that, whatever was happening in the economy, Woody refused to be depressed. The job market was dismal even for Phi Beta Kappas. At graduation Woody wrote: "As for the next year, nothing of any promise has presented itself. When I asked the Dean of Men for his advice, he told me to find a rich widow and get married. Thus far, even that course has brought no success. I may yet join the navy." ● In fact he joined the *Civilian Conservation Corps*, a government work program organized along military lines to give young men employment improving national forest lands. —EDWARD L. KIMBALL

CO. 902 CCC.
Tuna Canyon Camp
Tujunga, Calif.
February 16, 1937

Dear Lorene,

Now we shall launch out into the Sea of CCC, or further adventures of a Phi Beta Kappa as a California Chicken Chaser.

When I finished at Occidental last spring I found myself hopelessly in debt. The final exams and comprehensive had me very apprehensive, so I did practically no outside work during the last month of school. On top of that I fell prey to the temptations of all the social whirl incident to graduation. I even marched three quarters of a mile in the solemn procession to receive a blank diploma (which I promptly framed). It

was an occasion given to philosophizing upon my part. You may rest assured that I preserved a record of this embarrassing circumstance in my diary. It is now much too cold to recall.

At about this time, I was given an extension of NYA work to the first of July. I had about four months work to make up, so I managed to keep fairly busy. Nothing of consequence happened except that I spent a week at Catalina Island, or did I tell you of that when I last wrote?

Then came the first of July. I was absolutely broke and had nothing at all in sight for the first time in my life. In almost any modern periodical, you can read the story of my next two weeks, wandering about the city applying for every conceivable position and some that aren't. I reached a dramatic climax when I failed to qualify as a dishwasher at a hotel. I climbed the city hall tower and spent a couple hours with myself. (Incidentally, it was almost the poorest company I have ever had). Now that I can look back upon it, I'm sure there is

nothing quite so pathetic as a dreaming young man who managed somehow to get clear through college with all of his ideals intact, only to have them tumble about his head when he tries to sally forth in the manner in which he has been directed by the august persons who address the graduates.

The same afternoon, I signed up for the CCC. For the first week, I'm quite sure that I endured more hardship, more insult, and more defeat than I have ever faced before in my life. We met at the P.E. station in the early morning fog to go in a body to Van Nuys, some forty miles distant, where we were to formally enroll. As I sat in the dismal station (why are railroad stations always dismal?) I looked the gang over searching for one in all the assembled crowd with whom I might have something in common. . . . There was a commotion in the far end. It turned out to be a drunk as filthy and unsightly as some of the underworld characters in French novels. When the sound of his voice rose above his reeking clothes, he made the announcement that he was going along as a cook. Have you ever found a fly in your soup and lost your appetite? What would be the sensation if you had found a snake? Yes, that's just how I felt!

After we had enrolled, we were poured into trucks going to the various camps in the district in much the same manner that grain is poured from the elevators into box cars headed for several destinations. But I learned very quickly. The temperature stood at somewhere around 120 degrees. In our truck load were [men who] at freezing temperature would make an apt subject for a Life Buoy ad. . . .

Upon our arrival at camp, someone bawled out that we should grab our luggage and make for the nearest barracks. The first there would get the first bunks. Already I was a CCC boy. I'm sure I was no more than third in the race for the nearest barracks. In half a minute I had distributed enough of my luggage over several bunks in several barracks to assure me of an almost satisfactory place anyway.

When supper was called, the rush to the mess hall defied description. You would have sworn none of them had eaten anything in a week. When I made my gentlemanly way in, I had to battle with the K.P.'s to make my way to a table. I seated myself very quietly and did my best not to act too much like a Phi Beta Kappa fresh from college who felt that he was in decidedly inferior company. A large burly chap sitting next to me, sniffed the air like a troubled bull and then turning, gave me a shower of potatoes and gravy as he slobbered, "You smell like a damned warehouse, why don't you set somewhere else?" I spent more time looking than eating.

Big words, like big
weapons, portend
grave danger when
manipulated by those
who don't know
how to use them.



After the meal, I got out my sheet of instructions and did my best to dress up like a model CCC boy. On the whole I think I succeeded rather well. More was in store, however. I had no sooner started across campus than a rather over important chap grabbed me by the shoulder and shouted, "You're on the K.P., the kitchen's over there." Everybody laughed, just as

they do in the war movies at the K.P. During the course of the evening I managed to assist in the dropping of a dozen large plates; most of them broke, and the mess sergeant threatened to break the rest of them over our heads. It was long after dark when I finished my appointed task. Imagine my feelings when I discovered that the barracks where I had planned to sleep was locked.

While I was sitting on the front steps trying to figure out the next move, the night watchman came along and informed me that the captain had ordered that barracks closed because it was infested with bed-bugs to the extent that one arose very ill after having slept there a single night. He told me of a shack at the other end of camp where I might find a discarded mattress. In the dark, I couldn't see that it was rather filthy, so I was grateful. I made my way to another barracks and discovered an empty bunk purely by the sense of touch. It was an upper bunk at the far end. The fellow across the aisle inquired into the affair and loaned me a blanket.

I used my clothes for a pillow and was optimist enough to think I would sleep. I had almost succeeded in courting the muse when from somewhere below a pair of trousers sprang across my face. A shirt followed. I had seen the size of CCC boots, so I leaned over and uttered a feeble, "Hey!" a voice in the dark, exclaimed, "What the hell are you doing up there?" I couldn't think of anything clever, so I told him that I was sleeping. That, in short, was my first day in the CCC; I shall never forget it!

The next day we were kept in camp for orientation. As soon as I heard the word, I became suspicious. Big words, like big weapons, portend grave danger when manipulated by those who don't know how to use them. I was right. For my "orientation" I was given a bucket, a brush, and a can of lye and ushered into the large lavatory (which had no plumbing.) "Clean it!" were my instructions. My guide added that it usually took all day, so there was no need to hurry. For this task, I was garbed in large yellow shoes, denim trousers that were too small, a jumper that was more of a tent and a hat that was a combination of an empress Eugenie and a beach umbrella. The occasion was propitious for self-pity, but the lye was so strong that I had to keep my

mind on my work. When the day's work was done, not a spot of paint remained in the joint and my bright yellow shoes had turned almost black. By this time, I was fairly well convinced that I couldn't take it. I had already learned that the most convenient way out of the CCC was to pack up at dusk and disappear just as the lights went out. The process is called "Going over the hill."

But the tide turned. The mess sergeant had apparently forgiven me for the broken dishes, because he had asked the captain to put me on as a regular K.P. That was the beginning of the two most delightful weeks of my life, I am quite sure. I was given the highly colorful title of dining room orderly. I was dressed in pure white with large pearl buttons. My sole task was to set the tables, sweep the dining room floor, and wait on the officers' table at meal time. Work began at five thirty a.m. That shift kept me busy until 8:30 a.m., at which time I was free until eleven thirty. I worked then until two, was off until four thirty and then worked until six thirty. In a nearby canyon, I found a secluded little spot entirely shielded by thick brush and towering trees. In fact, one had to know the one way to get

tion of supply sergeant which he had held until the CCC started. He then joined the CCC and took the same position under an old army commander he had known. He was rather likable, very neat, rather an upright sort. But how different his life had been from mine. For him there was no struggle through college, no uncertainty, no driving ambition. Before my week was up, I almost envied him.

Back at camp I fought my first real battle. I learned the whole truth of my advancement. The erstwhile supply sergeant had fallen into disfavor with the captain, but managed to maintain extreme popularity with the fellows. After I took one look at his records and the list of property that he was short, I immediately agreed with the captain, and I wasn't very particular who knew it. A chorus of fellows gathered in front of the recreation hall and held a booning ceremony for the new supply sergeant. The fact that I had been to college made very good ammunition. I heaped coals upon the fire by pressing charges against every enrollee who was short any property for which the captain was pecuniarily responsible. The mob antipathy was short lived, as is any mob action. I contrived to make possible a weekly change of

Next I learned to swear, an invaluable aid! Nine times out of ten when you tell a man to go to hell in a loud tone of voice, he won't call your bluff.

in, or the brush proved impenetrable. I spend a great share of my spare time there, taking sunbaths, reading, writing, or just lying on a mat of oak leaves watching the clouds. The glorious part of it was that after working three days, I had three days off. At the close of my first shift, the captain came to me and complimented me upon the way I did my work. Without thinking, I felt a thrill of pride. Afterward, I laughed heartily. I had been deeply complimented because I made a good K.P. in a CCC camp. But I really like it. The seclusion here was so complete, the work so simple, and the surrounding wooded hills so much to my liking.

But clouds appeared on the horizon. One morning as I stood at the captain's elbow, he informed me that I was to pack my clothing immediately and meet him out front, that I was to be promoted, and in preparation was to go to headquarters for a week's study under the supply sergeant there. I couldn't imagine why in the world that should mean so much rush or be done under such dire secrecy, but I didn't want to appear dumb, so I packed. On the way over he told me that I would receive a raise in pay and hold the title of assistant leader (which I learned later means nothing at all in this particular camp). At headquarters I learned first of all the rather minor matter of keeping the books for the supply department of the CCC and the issuing of clothing and supplies, and the much more important matter of chiseling to the extent that there would be no shortages when it came to the matter of property accounting—and shortages are the inevitable lot of the CCC personnel. The man I worked under was to me a very special study in psychology. He had joined the army when he got out of school, rose to the posi-

tion of supply sergeant which he had held until the CCC started. He then joined the CCC and took the same position under an old army commander he had known. He was rather likable, very neat, rather an upright sort. But how different his life had been from mine. For him there was no struggle through college, no uncertainty, no driving ambition. Before my week was up, I almost envied him.

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While I held this position, one occurrence imprinted itself upon my memory. Once each week, I took a trip to headquarters for supplies, where I mingled with the stooges and gold bricks who lived the urban life of luxury of the headquarters detachment. To observe them, you wouldn't think that they are ordinary enrollees just like the rest of us. I insisted upon wearing my gaudy hat, before mentioned, and a pair of leather heels that made me sound like a whole army. I soon acquired the reputation of being awfully smart for being so dumb. (If you can figure that out.) One day, the warehouse clerk who looked and acted as important as a bloated toad happened to hint that he had been to college. That was an opportunity. Having heard how effectively a college man can be razzed by CCC boys, I decided to try it. When I finished my little speech, he was decidedly uncomfortable. Then I asked him what he took in college. His eyes gleamed, here was his chance, drawing himself up, he declared decorously, "I majored in merchandizing. Having completed but two years of my course, I took such subjects as Advanced Economic Theory, International Trade—but you wouldn't know anything about that, would you? I suppose college is just as far away from your type as is Kamchatka!" "No", I replied, being as mean and small as ever I could, "I wouldn't happen to know the law of diminishing returns; would you quote it?" He couldn't.

Next was "What my, dear fellow, is a protocol?" He had ribbed me mercilessly for being a hude, so I spared him not a bit. After several more unimportant technical questions, I concluded my little show with the suave statement, "And so my dear fellow, I would know nothing at all about college, and especially about a merchandising major!" I pushed my goon hat back onto my neck and sauntered away to the tune of applause and guffaws from similarly persecuted hudes.

After that the game of getting goats became an interesting pastime. Very often it was my goat that suffered, but often enough it was someone else's. On one occasion, a first lieutenant of the Marine Corps refused to honor my requisition on a minor point because I had tricked him into accepting two hundred pairs of old shoes that should have been repaired and greased before they were turned in. I marched into the quartermaster's office and presented my case of injustice. It got results. The quartermaster called up the first lieutenant and informed him that he was to honor my requisition. I pressed the point too far, I fear, because the Lieutenant declared war on me. I was quite relieved when my change of occupation took me out of his sphere of influence.

That was at Christmastime, when I rose to my present position of doubtful honor. I am now assistant company clerk, assistant canteen steward, assistant first aid man, and unofficial assistant to the supply steward (my brother, Aaron), assistant dispatcher, and clerk for the mess steward. You've guessed it, it's merely a matter of titles. I manage to keep very busy, but there is little immediate danger of a nervous breakdown.

. . . I think you know me well enough to understand just how disappointed I was at not being able to get into school this year. The outlook is now very bright. I will go to school next year. That is very certain. As to just where I will go, there is still some question. An influential friend, Leo J. Muir, has promised to get me in touch with Senator MacAdoo, who some time ago promised to help me find part time work in Washington while I attend school there. I have corresponded with Michigan University and learned that one can go to law school there very cheaply—and Michigan ranks very high as a law school. I'm quite sure it will be one or the other. I have been hoarding my wages like a miser. That, incidentally is a bright spot in this novel experience of mine. My income at present is just a bit vague, but on the average it is something over fifty dollars a month with board, room and clothes besides. It goes without saying that every bit of the cash goes into the bank against next year's education. There is a genuine thrill in looking forward. There is the doubt that I might not be able to do as well as I did at Occidental[, but t]he hope that I might do even better. — The dreams that one inevitably builds for the future.

You were right Lorene, the CCC is no place for anyone who claims to be respectable. Some of these fellows could walk under a snake's chassis without stooping over, morally speaking. At least once a month we have to discharge a man because he has contracted venereal disease. Some of them don't even seem to care! One is constantly confronted with all imaginable forms of vulgarity. However, I can't complain. I

share a very comfortable room in the camp hospital with the first aid man, who is as noble a chap as I shall ever hope to meet anywhere. I could not have found a finer friend in the best college. We have absolute privacy. Only the officers can enter our quarters without our permission. We have access to the hospital washroom. The office force has a private table in the dining hall. I do not attend any formations, I am exempt from all extra duty, and have private transportation to the city whenever I go on leave. Those things don't necessarily go with my position, but I have managed to win the goodwill of the officers, who deny me nothing within reason.

I have tentatively decided to write a book on CCC life. To that end, I have kept a daily diary that boasts eight hundred pages for last year and a good start for this. There are difficulties, however. In the first place, I see the camp life as one totally detached, since I am immune from practically all of its discomforts. Then, too, if I am to write a worthwhile book, I must master the art of being brutal without being bitter, of being serious without being tragic, and of being humorous without being absurd.

I am somewhat hesitant about mailing this letter. I fear I have overemphasized for the most part the unpleasant aspects of this little colony of ours. Frankly, on the whole, I like it here. I think the CCC should be made a permanent organization, and I have high hopes that it will someday take its place in the country as a highly respectable institution.

Sincerely,
Woodruff

JUNE 30, 1937

Dear Lorene,

The long and the short of it is that I have been offered a job in Washington, D.C., which I considered so worthwhile that I am giving up the scholarship at Duke University. I will have to work days and go to school nights for the first year, but after that I will have night shift and be able to go to school in the daytime.

Since last I wrote you, I have advanced to the much esteemed title of top sergeant at the same time keeping all my other duties and the net result is that I've had my nose to the grindstone continuously. . . .

I'm rather glad things turned out as they did because another two months of CCC life would have proved quite unbearable. All of my friends have left and the only officer for whom I had a wholesome respect is leaving today. It's strange how one comes to see that the changes in his life couldn't have occurred any other way under the circumstances.

Sincerely,
Woodruff

Part two, "Washington, D.C.," will appear in the next issue of *Clark Memorandum*.



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by Bishop Merrill J. Bateman

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This address was given at the J. Reuben Clark Law School Fireside, September 25, 1994.

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A short time ago I attended the funeral of a friend's 17-year-old son. Earlier in the week the young man and a number of youth had spent the night at a dance club without the knowledge

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of or permission from their parents. Just before dawn they left the club to return to their homes. My

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friend's son, with six others in a small, compact car, was traveling south on the freeway when the driver

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of a car traveling in the opposite direction fell asleep. His car crossed the median and smashed head-on

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into them. The accident occurred with such swiftness that few, if any, brake marks showed on the high-

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way, and both cars were demolished. Amazingly, six individuals lived, but three persons

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died: my friend's son, a 17-year-old young woman, and the driver of the other car.

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INFINITE
AND
ETERNAL

Illustrations by Doug Fryer

In reflecting on the accident, I have thought about the lessons taught by the death of a loved one. The first is that life is short whether one dies at age 17 or at age 80. To a 17-year-old, 80-odd years seems like an eternity. He or she feels invincible—life will never end. To a 70-year-old, 80 years is not a long, probationary period. An LDS hymn suggests the fleeting nature of life:

*Time flies on wings of lightning; We cannot call it back.
It comes, then passes forward Along its onward track.
And if we are not mindful, The chance will fade away,
For life is quick in passing. 'Tis as a single day.*

[Robert B. Baird, "Improve the Shining Moments," *Hymns of The Church of Jesus Christ of Latter-Day Saints*, 1985, no. 226.]

Second, death reminds us that there is a spirit in man. As we viewed the remains of our young friend, it was obvious that more than blood had left the body. The light of his spirit no longer animated his facial expression or twinkled in his eyes. He had given up the ghost at a tender age.

Another lesson taught by death concerns the importance of eternal families. Just as there are parents to greet a newborn on this earth, caring family members, the scriptures teach, greet the spirits in paradise and assist them in the adjustments to a new life (Genesis 25:8, 35:29, 49:33). As I stood before the bier, the thought came to me that separation was a shock not only for the parents but also for the young man himself as he suddenly found himself on the other side of the veil. I suspect it was as traumatic for him to leave family and friends as it was for his parents to be separated from him. He probably would like to tell his parents once more how much he loves them. Building enduring relationships with family and friends is a central purpose of earth life. Death reminds us that heaven exists only if families are eternal.

A fourth lesson concerns the purpose of life. To be meaningful, life must be more than the ephemeral pleasures of youth. There must be a plan. Death, even if accidental, must be part of the plan. In addition to building eternal family ties, developing faith in and coming to know one's Maker must be at the core of the plan. Having hope about one's eternal destiny and the possibility of experiencing lasting joy must also be part of life's purpose.

In that regard, death reminds us that we do not experience a fullness of joy in mortality and that we cannot achieve lasting joy without the assistance of someone greater than ourselves (D&C 93:33–34). Just as the lame man at the pool of Bethesda needed someone stronger than himself to take advantage of the stirring of the water (John 5:1–9), we are dependent on the miracles of God if we are to overcome the manifold sins and shortcomings in our own lives and achieve the destiny within us. Death is a strong teacher of one's dependence on the atonement and resurrection of the Master.

The purpose of the following is to discuss some aspects of the Atonement in order to deepen our appreciation of

the greatness of the Father and the Son. Also, the hope is that our understanding of the Atonement will increase. There is much that we do not know. How a god living on this earth could take upon him the sins of mankind and receive the power to perfect men and women in him is beyond mortal comprehension. And yet there are many aspects of the Atonement that are within the grasp of one's mind and spirit. If understood, they deepen one's gratitude and commitment to the Lord of this earth.

THE ATONEMENT —

INFINITE AND ETERNAL

The atonement of the Lord Jesus Christ is the most transcendent event in history. It is the central feature of the Father's plan to open the door for his children to return to him and obtain a fullness of joy. It is the foundation of the gospel plan and gives meaning and hope to mortality. The scriptures are filled with statements describing the importance of Christ's sacrifice. The Prophet Joseph Smith recorded:

And this is the gospel, the glad tidings, which the voice out of the heavens bore record unto us—

That he came into the world, even Jesus, to be crucified for the world, and to bear the sins of the world, and to sanctify the world, and to cleanse it from all unrighteousness;

That through him all might be saved whom the Father had put into his power and made by him. [D&C 76:40–42]

The prophet Lehi taught the same principle:

Wherefore, redemption cometh in and through the Holy Messiah; for he is full of grace and truth.

Behold he offereth himself a sacrifice for sin, to answer the ends of the law, unto all those who have a broken heart and a contrite spirit; and unto none else can the ends of the law be answered.

Wherefore, how great the importance to make these things known unto the inhabitants of the earth, that they may know that there is no flesh that can dwell in the presence of God, save it be through the merits, and mercy, and grace of the Holy Messiah, who layeth down his life according to the flesh, and taketh it again by the power of the Spirit, that he may bring to pass the resurrection of the dead, being the first that should rise.

Wherefore, he is the firstfruits unto God, inasmuch as he shall make intercession for all the children of men; and they that believe in him shall be saved. [2 Nephi 2:6–9]

Through the Atonement, mankind is given the opportunity to overcome both physical and spiritual death. Christ, because he is God, has the power to resurrect all mankind and to cleanse faithful men and women and make them worthy to return to their heavenly home.

Amulek commented on the nature of the Atonement as he and Alma were teaching the Zoramites.

For it is expedient that there should be a great and last sacrifice; yea, not a sacrifice of man, neither of beast, neither of any manner of fowl; for it shall not be a human sacrifice; but it must be an infinite and eternal sacrifice. . . .

And behold, this is the whole meaning of the law, every whit pointing to that great and last sacrifice; and that great and last sacrifice will be the Son of God, yea, infinite and eternal. [Alma 34:10, 14]

What is meant by the great and last sacrifice being infinite and eternal? Can one differentiate between the infinite nature of the Lord's sacrifice and its eternal qualities without demeaning its wholeness? Ultimately, the infinite and eternal aspects of the Atonement come together just as faith turns into repentance and repentance into baptism. But like the first principles, an appreciation of the differences increases one's understanding of the great plan of redemption and the Lord's redeeming power in terms of the Atonement's vastness as well as its intimacy. Thus we begin with a discussion of the infinite atonement.

THE INFINITE ATONEMENT

The word *infinite* means "having no limit or extending indefinitely." Here it refers to the vastness of the Atonement's effects. There are many ways in which the Lord's suffering in the Garden and sacrifice on the cross is infinite. The first is that the offering was by an Infinite Being. Second, the sacrifice is infinite through time. Third, it is infinite across space. Also, the sins, pains, sicknesses, temptations, and infirmities experienced by the Lord were numberless. Finally, the Atonement overcame physical death, which is universal and covers all creation. A brief statement on each aspect of the infinite atonement follows. (An excellent statement on the infinite atonement appears in Joseph Fielding McConkie and Robert L. Millet's *Doctrinal Commentary on the Book of Mormon*, vol. 3, pp. 246–249).

The Son of Man—An Infinite Being

Jesus is Jehovah, the God of the Old Testament. The name *Jehovah*, signifying "I Am" or "the Self-Existent One," connotes a being whose existence or duration has no end (James E. Talmage, *Jesus the Christ*, p. 36). Jesus is the son of an immortal Father and a mortal mother. As the Only Begotten Son of God, he inherited "life in himself" from his

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Father, who has life in himself (John 1:14; 5:26); i.e., Jesus had the seeds of immortality within him, and death was not mandatory. He had the power of an endless life. From his mother he inherited the seeds of mortality and could experience death if he so chose. As he said to the Pharisees, "Therefore doth my Father love me, because I lay down my life, that I might take it again. No man taketh it from me, but I lay it down of myself. I have power to lay it down, and I have power to take it again. This commandment have I received of my Father" (John 10:17–18).

Jesus had the power to live forever. He also had the power to lay down his life voluntarily, to experience death of the body, to live as a personage of spirit in paradise, and then to reunite the spirit with the body according to the commandment he received from his Father. The sacrifice of a bird, an animal, or even a man could not satisfy the requirement of an infinite offering, because each of these living beings carries mortal seeds through the fall of Adam, and death is inevitable for them (1 Cor. 15:22). Only an Endless Being could make the voluntary act required. When a person understands Jesus as more than a mere human, hope and faith in him are kindled in the heart, and obedience follows.

The Atonement—Infinite Across Time

The Savior's atonement covers the sins of God's children throughout the eternities. It is timeless. It embraces the sins of the past, the present, and the future. It reaches back before Eden and forward beyond our millennium. In the space of a few hours, Jesus offered himself as a ransom for sins for those who believe, repent, receive the ordinances, and endure to the end—not only for those who preceded him, but for all those who follow as well, for as long as the Father has children. He is the "Lamb slain from the foundation of the world" (Revelation 13:8). Through the Atonement, little children are born innocent in this life, redeemed from the Fall. At a later point in the eternities they are made whole again, resurrected from an endless sleep (D&C 93:38; Mormon 9:13). Although the timelessness of the Atonement is incomprehensible, one understands that the atoning sacrifice is beyond the capability of any mortal being; therefore, the Savior said: "I am the light which ye shall hold up" (3 Nephi 18:24). As the light of Christ quickens our understandings, our love and appreciation for the Savior deepens.

Infinite Across Space

The scriptures imply that the Savior's atonement extends beyond this orb. The Prophet Joseph Smith records the Lord's words to Moses as follows: "And by the word of my power, have I created them, which is mine Only Begotten Son. . . . And worlds without number have I created; . . . and by the Son I created them" (Moses 1:32–33). Under the direction of the Father, Jesus is the Creator of worlds without number. What happens to the inhabitants of other earths? Who atones for their sins? How are they redeemed? In a revelation to Joseph Smith and Sidney Rigdon, the two men saw Christ on the right hand of God and heard a voice bear record that "he is the Only Begotten of the Father—That by him, and through him, and of him, the worlds are and were created, and the inhabitants thereof are begotten sons and daughters unto God" (D&C 76:23–24). Through the power of Christ's atonement, the inhabitants of other worlds become "begotten sons and daughters" of God; i.e., the saving procedures are the same for them as they are for us.



One of the clearer statements on this subject was given by President Marion G. Romney in a conference address in 1969. Referring to D&C 76, he said:

*From this and other scripture we learn that, representing the Father and serving his purpose "to bring to pass the immortality and eternal life of man," Jesus Christ, in the sense of being its Creator and Redeemer, is the Lord of the whole universe. Except for his mortal ministry accomplished on this earth, his service and relationship to other worlds and their inhabitants are the same as his service and relationship to this earth and its inhabitants. [Marion G. Romney, "Jesus Christ, Lord of the Universe," *Improvement Era* 76 (November 1969):46]*

No wonder the atoning sacrifice required an infinite being! The suffering in the Garden of Gethsemane and the sacrifice on Golgotha embraced not only the billions who have lived on this earth but also the numberless sons and daughters of God who have lived elsewhere.

Sins, Pains, Temptations, Weaknesses of Every Kind

Alma records that the Son of God "shall go forth, suffering pains and afflictions and temptations of every kind;

. . . and he will take upon him their infirmities, . . . that he may know according to the flesh how to succor his people according to their infirmities" (Alma 7:11–12). Jacob taught that Jesus would "save all men if they will hearken unto his voice; for behold, he suffereth the pains of all men, yea, the pains of every living creature, both men, women, and children, who belong to the family of Adam" (2 Nephi 9:21). Isaiah said: "Surely he hath borne our griefs, and carried our sorrows" (Isaiah 53:4). John the Baptist introduced Jesus by saying: "Behold the Lamb of God, which taketh away the sin of the world" (John 1:29). The magnitude and variety of sin, pain, temptation, and afflictions that he experienced appears limitless. This is the fourth aspect of the infinite nature of the Atonement.

The Universality of Death

As Alma indicates, Christ voluntarily suffered death in order to loose the bands of death for his people (Alma 7:12). Through the fall of Adam and Eve, death came upon all creatures and covered the landscape. Not only God's children but also plants, animals, and nature itself entered mortality through the

Fall. Even the earth became subject to death because of Adam's transgression.

Christ's atonement and resurrection made temporary the separation of body and spirit (1 Corinthians 15:19–21). As part of the plan of salvation, all creatures will be resurrected. Even the earth, which was baptized with water, will be baptized with fire and eventually die. Through the atonement and resurrection of Christ, this physical earth will be reunited with its spirit and become exalted to a celestial sphere. The reality of the resurrection for all creation is made possible by the Savior's sacrifice (D&C 29:22–25; 88:25–26; *Doctrines of Salvation*, vol. 1, pp. 72–89).

An understanding of the infinite nature of the Atonement increases one's appreciation for the Lord Jesus Christ. We stand in awe as we contemplate the magnitude and dimensions of the suffering required to pay the price of sin for all humanity. Our hearts and souls become more contrite as we contemplate that he was tempted in every way in order to understand our weaknesses and flaws so that he "giveth power to the faint; and to them that have no might he increaseth strength" (Isaiah 40:29). With these thoughts in mind, the eternal nature of the Atonement leaves one even more awestruck.

ETERNAL ASPECTS OF
THE ATONEMENT

Eternal is one of the names of Deity (Moses 7:35). Although the word *eternal* is sometimes used to mean endless, it is often used in the scriptures to describe “godlike” attributes or principles. For example, the kind of life God lives is called eternal life (exaltation). It is the type or quality of life lived by God. The punishment meted out by God to transgressors is called eternal punishment, a name having reference to the type and not the duration of the penalty imposed (Bruce R. McConkie, *Mormon Doctrine*, pp. 216, 219). Whereas the term *infinite* refers to the outward dimensions of the Savior’s life and sacrifice when speaking of the Atonement, the term *eternal* refers, in part, to the inward quality of his being and the qualitative changes in mankind’s spirit and body that are the benefits of Gethsemane and Golgotha. In what ways were the Savior’s character and personality eternal and what are the eternal aspects of his atonement?

Jesus, An Eternal Being

The scriptures clearly teach that Jesus was Jehovah, the God of the Old Testament (Exodus 3:14; John 8:58, D&C 29:1, 38:1, 39:1). As the firstborn in the spirit, Jesus achieved godhood in the eternities prior to his life on earth. He was and is the Lord Omnipotent. Under the direction of the Father, he created all things, both in heaven and in earth. Prior to his birth, he had all wisdom and comprehended all things. In the words of King Benjamin:

The Lord Omnipotent who reigneth, who was, and is from all eternity to all eternity, shall come down from heaven among the children of men, and shall dwell in a tabernacle of clay, and shall go forth amongst men, working mighty miracles. . . .

And he shall be called Jesus Christ, the Son of God, the Father of heaven and earth, the Creator of all things from the beginning; and his mother shall be called Mary. [Mosiah 3:5, 8]

Thus the Atonement was performed by an eternal being.

A Perfect, Sinless Being

Not only was Jesus an eternal being prior to birth, but he lived a perfect, sinless life on earth. This was accomplished in spite of temptations and sufferings of every kind, “which suffering

caused [him], even God, . . . to tremble because of pain, and to bleed at every pore” (D&C 19:18). The apostle Peter indicated that mankind was redeemed not by corruptible things such as silver and gold but “with the precious blood of Christ, as of a lamb without blemish and without spot: Who verily was foreordained before the foundation of the world” (1 Peter 1:19–20). Christ was selected in the premortal world as the sacrificial lamb. For centuries the Israelites were told that the lamb offered in similitude of the great sacrifice must be without blemish or spot as a type for the sinless Messiah. Adam learned in the beginning that he should offer the firstlings of the flock in similitude of the Savior’s offering—



the sacrifice of God’s firstborn (Moses 5:5–7). All Mosaic sacrifices were types and shadows of the great and last sacrifice of the Only Begotten (Genesis 4:4, Exodus 12:5, Numbers 9:12, Moses 5:7). The Savior’s perfect life reflected his eternal nature and satisfied the requirement of an eternal sacrifice. As President Howard W. Hunter indicated in April 1994 general conference: “The world is full of people who are willing to tell us, ‘Do as I say.’ . . . But we have so few who are prepared to say, ‘Do as I do.’

And, of course, only One in human history could rightfully and properly make that declaration. . . . Only Christ can be our ideal, our ‘bright and morning star’” (CR, April 1994, p. 83). Only Christ, the God of the Old Testament and a perfect, sinless, eternal being in mortality, had the capacity to take upon himself the sins, pains, sufferings, and temptations of mankind satisfying the requirements for an eternal sacrifice.

The Great Plan of Redemption

The purpose of the Savior’s atonement was to help men and women achieve eternal life, to redeem mankind from the fall of Adam and from sin. The Lord told Moses, “This is my work and my glory—to bring to pass the immortality and eternal life of man” (Moses 1:39). Prior to mortality, mankind lived as spirits in the presence of the Father of spirits. In order for God’s children to progress, to achieve immortality and eternal life, it was necessary for them to leave the Father’s presence, receive a physical body, experience mortality, be free to choose good or evil, and prove themselves obedient to his commandments. Our Father in Heaven knew that mortality required the fall of mankind—a change in man’s nature in order for the test to occur. He knew the effects of the Fall: physical and spiritual death. Physical death would

result in a separation of body and spirit, whereas spiritual death would separate mankind from his presence, and God's children would perish from that which is good. In order for mankind to experience lasting joy and happiness, both deaths would need to be overcome (Abraham 3:22–26).

God also knew the interworkings of the eternal laws of justice and mercy. The law of justice affixes rewards when laws are obeyed and penalties when laws are broken. Rewards bring happiness. Broken laws bring unhappiness and spiritual death. The eternal law of mercy allows the penalties of broken laws to be paid by the sufferings and sacrifice of a worthy Mediator, provided the offender satisfies certain conditions. The Mediator's payment also allows for the restoration or redemption of the sinner's soul on those same conditions. The requirements for each individual are a broken heart and a contrite spirit; faith in the Father, in his Son, and in the plan of redemption; repentance; and the making and keeping of gospel covenants (2 Nephi 2; Alma 41, 42; D&C 130:20–21).

Consequently, the great plan of redemption was instituted. The Holy One of Israel was chosen as the Mediator and Redeemer in the grand council in heaven. An earth was created as a probationary state where men and women could prove themselves, agency was given, Satan was allowed to tempt Adam and Eve, and they fell that men might be. Physical and spiritual death entered the world and mankind was cut off from the presence of God through sin as well as Adam's transgression. Adam and Eve and their children were taught the plan of redemption. A probationary period was established to allow men and women to exercise faith and to repent.

The Redemptive Power

John the Baptist bore record that Jesus received a fullness of power from the Father through his obedience. He received the power on a grace-for-grace basis by submitting his will to the Father in all things. Jesus received the fullness of the Father's glory and possessed all power, both in heaven and on earth (D&C 93:6–30, Matt. 28:18).

Peter, the chief apostle, states in his second epistle that Jesus' "divine power hath given unto us all things that pertain unto life and godliness" (2 Peter 1:3). Through Christ's suffering in the garden and sacrifice on the cross, life was given to all mankind. Physical death was overcome; everyone will be resurrected. Also, Jesus received power from the Father to overcome spiritual death, i.e., to restore men and women to a state of godliness according to the laws of justice and mercy. Jesus told the Nephites after his resurrection: "As I have been lifted up by men even so should men be lifted up by the Father, to stand before me, to be judged of their works, whether they be good or whether they be evil" (3 Nephi 27:14). The honorable men and women of the earth who exercise faith in Christ, repent of their sins, partake of the covenants, and continue faithful to the end are sanctified by his blood and by the Holy Spirit during mortality and in the spirit world. They receive the gifts of

the Holy Spirit: love, joy, peace, long-suffering, gentleness, goodness, faith, meekness, temperance, etc. In Peter's terms, they become "partakers of the divine nature" (2 Peter 1:4), which opens the door into the everlasting kingdom of the Lord. In Moroni's words, those individuals who deny themselves of ungodliness, who serve God with all their might, mind, and strength find that Christ's grace (power) is sufficient for them, that by his grace they become perfect in Christ. And those who become perfect in Christ, and deny not his power, become holy, without spot (Moroni 10:32–33).

The Power to Heal From Within

As part of the redemptive power, Jesus can heal the troubled soul from pains and sicknesses of every kind. Jesus knows each of us personally through his premortal role as a member of the Godhead when we dwelt with him in premortality, and because of the Atonement. Alma records that Jesus experienced our pains, afflictions, temptations, sicknesses, and infirmities during his earthly sojourn so that his bowels would be filled with mercy and he would know, according to the flesh, how to succor us (Alma 7:11–12). This helps us understand, at least partially, his power to make whole, to restore, to redeem. Isaiah and the prophet Abinadi report that when Christ would "make his soul an offering for sin, he shall see his seed" (Isaiah 53:10, Mosiah 15:10). Abinadi explains that His seed are the righteous, those who follow the prophets (Mosiah 15:11). In the Garden of Gethsemane and on the cross, Jesus saw each of us and not only took upon himself our sins but also experienced our critical feelings such that he would know how to help us in mortality.

As part of his redeeming power, Jesus can restore the spiritual health of the faithful in that he knows how to succor each individual. Although the scriptures are filled with examples, a young Korean sister taught me this lesson. Sitting on the stand prior to a Sunday general session of stake conference in the Seoul North Korea Stake in early 1994, I was reviewing the program trying to identify each speaker's name with the people on the stand. I was able to do this except for one name—that of Kim Young Hee. Off in the corner I noticed a young woman sitting in a wheelchair. I then quietly asked the stake president if the young woman was the speaker whom I could not identify. He assured me that she was. She was beautiful, but it was obvious that she could not walk. When it came time for her to speak, a brother pushed her chair to the front of the stand but off to the side of the pulpit so that she could see and be seen. He then handed her a microphone. She told us the story of her conversion.

As a young woman, she had been healthy, had an excellent job, and was content with life, although not a Christian. In 1987 she was in a terrible car accident that left her paralyzed from the waist down. Following her recovery in a hospital, she was living with her parents wondering what she could do with her life. She was despondent and felt empty. What could life possibly hold for her? One day a knock came at the door. Her mother answered, and two American women asked to share a message with the family. Though the mother tried

to send them away, the daughter could hear their voices and asked the mother to invite them in. They were missionaries of The Church of Jesus Christ of Latter-day Saints. Sister Hee accepted the invitation to receive missionary lessons. They began teaching her the gospel. Although her parents discouraged her from meeting with the missionaries, she continued taking the lessons as she enjoyed the companionship at first and then began feeling the warmth of the spirit as she read the Book of Mormon and attended church. Eventually, she received a witness and was baptized.

As she bore her testimony in stake conference, she said: "I know that Heavenly Father does not look on the outward appearance but on the heart. I also know that the greatest miracle is the healing within, the change of heart, the loss of pride. With an understanding of the gospel plan and faith in Jesus Christ, I now can face the world even if I am confined to a wheelchair."

As I listened to her, I began to understand that the greatest miracle of the Atonement was the power Jesus received to change lives if people come to the Father and the Son with a broken heart and a contrite spirit. Although her physical body may not be healed in mortality, her spirit had already been healed by the power of the Holy Ghost. In the resurrection she will receive a fully restored, perfected physical body that will be inseparably connected with her beautiful, healthy spirit. As a consequence, she will experience a fullness of joy. But the great miracle that will make her ultimate destiny possible is the healing of her spirit by the Holy Ghost through the eternal atonement.

The Ten Lepers

Perhaps Sister Kim's discovery reveals the meaning of the Savior's parable of the ten lepers. Luke describes Jesus meeting ten lepers in a certain village where they stood afar off. They lifted up their voices and asked Jesus to have mercy on them. When the Savior saw them, he told them to show themselves to the priests. As they went their way, they were cleansed. One of them, when he realized he was healed, returned to Jesus, fell on his face at the feet of the Master and gave thanks. Jesus said to him: "Were there not ten cleansed? but where are the nine?" And then the Lord said to the one who returned: "Arise, go thy way: thy faith hath made thee whole" (Luke 17:12-19). To become a whole person, the grateful leper was healed from within as well as on the outside. Nine lepers were healed skin-deep, but only one had the faith to be made

Although her physical body may not be healed in mortality, her spirit had already been healed by the power of the Holy Ghost. In the resurrection she will receive a fully restored, perfected physical body that will be inseparably connected with her beautiful, healthy spirit.

whole. In the case of the nine, the healing apparently did not result in a spiritual blessing. The tenth leper and Sister Hee were changed eternally by their faith in the Savior and the healing power of the Atonement.

Eternal Judgment

Another aspect of the eternal atonement is the power to make the final judgment regarding the destiny of men's and women's souls. The Savior revealed to his disciples in Jerusalem: "In my Father's house are many mansions" (John 14:2). The scriptures teach that there are many kingdoms of glory to which one may be assigned (D&C 76, 1 Corinthians 15:40-41). Who determines our ultimate assignments? As part of the eternal atonement, Jesus received the power, the insight, and the understanding to make the judgment that determines our eternal destinies. Jacob explains that the "keeper of the gate is the Holy One of Israel; and he employeth no servant there" (2 Nephi 9:41). As explained previously, Jesus experienced our pains, sufferings, temptations, sins, sicknesses, and infirmities. He knows us personally. Jesus received a commission from the Father that gives him the right to carry out the judgment. The commission, combined with his knowledge and insights regarding our desires and character gleaned through the Atonement, coupled with his knowledge of the laws of mercy and justice, allow him to make a righteous judgment.

CONCLUSION

Alma and Amulek understood the gospel plan. Although they lived decades before Jesus of Nazareth was born, they knew that he would be the Son of the Father. They understood that he would have the seeds of immortality within him so that his sacrifice would be voluntary. Moreover, the sacrifice would be infinite and eternal. It would span eternities as well as space. But it would be an intimate offering as well. The Savior's eternal capacity would pay the price of sin for all of us and internalize within us the meaning of our pain, sicknesses, temptations, afflictions, and infirmities so that he could heal us, restore us to a celestial state, and help us achieve our potential.

Bishop Merrill J. Bateman is the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints. In January 1996 he will become the president of Brigham Young University and a member of the First Quorum of Seventy.

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Law

BY

MARILYN V. YARBROUGH

THIS ADDRESS WAS GIVEN AT THE J. REUBEN CLARK LAW SCHOOL COMMENCEMENT ON APRIL 28, 1995.

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Members of the class of 1995 of BYU Law School, thank you for inviting me. I am honored. · While I was thinking about the presentation for this afternoon, one of my favorite poems kept coming to mind:

*Two roads diverged in a yellow wood,
And sorry I could not travel both
And be one traveler, long I stood
And looked down one as far as I could
To where it bent in the undergrowth.*

[Robert Frost, "The Road Not Taken"]

School

For the last few years when speaking at an occasion like the one we celebrate today, I have quoted from the book *All I Ever Really Needed to Know I Learned in Kindergarten*, not just for law school graduation ceremonies but for orientations and honors days as well. With general student audiences, I have used it to reassure students that they

are equipped to handle the anxiety and stress that invariably occurs when they encounter new situations. For law students, I have used it to reassure them that they are equipped to handle the anxiety and stress that evidently affects law students and lawyers in exceptionally high proportions. I have used it hoping to enable them to answer critics of the profession who seek to judge them by their stereotypical depictions of lawyers as dishonest and greedy, by providing them with the confidence

and serenity that arises from knowing they are charting the proper course. I realize that in speaking to you, such use may be redundant. Although you have chosen to seek your legal education in such a special place and therefore have pledged to live your lives in a special way, I want to come back to

uating and also to reaffirm many things that you already know. The poem states the challenge: that you consider pursuing the road less traveled by. You are special people. Most of you have already taken that path in just how you've chosen to live your lives. In numbers, in level of education, in hours worked, in so many ways, you are very different from most of your non-law colleagues. In our professional code, you are—we are—unique as well.

began looking for themes especially meaningful to you. Last November I clipped from a recent issue of *USA Today* the cover story, entitled "Children Get Poorer; Nation Gets Richer." I was saving it for inclusion in the materials I was collecting for the race and gender class I teach spring semester. Accompanying the feature was a straight news story headlined "In 1993, Child Poverty Levels Hit 30-Year High." I was struck by the opening paragraphs:

They do not
wash their hands
before they eat. There is
no water. Or soap.
And some do not have
hands to wash —Robert Fulghum

that essay and another one in a few minutes; but first, back to the poem.

For some reason, of all the poems I learned in high school, that Robert Frost one sticks with me—at least that much of it. I sensed that it was appropriate for today's talk, but I couldn't remember anything beyond those first four lines. One of my daughters supplied the last lines of the poem:

*Two roads diverged in the wood, and I—
I took the one less traveled by,
And that has made all the difference.*

My objective today is to present a challenge to those of you who are grad-

We place particular demands on ourselves. We share a passion for justice and access to justice that transcends any memorized or learned credo. From what I know of you, you share with me a passion to make the world a better place for all of us.

Having said that, I want to devote the rest of my remarks to what I see as one of the most formidable obstacles to the future greatness of our society. It threatens us no matter how well off, how well educated, or how well protected we feel. It is the hopelessness felt by so large a segment of our population.

When your dean asked if I would deliver your commencement address, I

Seven-year-old Antoinette Thomas doesn't know that here in her homeland, 15.7 million children are poor. But she knows she's poor: She has to save her candy money to buy socks.

Nine-year-old Sandra Gomez doesn't know that a greater share of U.S. kids are poor now than at any time in three decades. But she knows she's poor. The family meal is donated by the local church.

Fourteen-year-old Ralph Montemayor doesn't know that 31 percent of poor kids, like him, now live in suburbia. But he knows he's poor: He hates to show people the crumbling house where he sleeps under a big hole in the ceiling.

The statistics record it: Nearly 23 percent of kids live in poverty, not in third world countries, but *here in the United States*.

Sandra Gomez' father works from 6:30 a.m. until 10:00 p.m. In fact, almost two-thirds of poor families with kids have an adult who works; one-fifth

employment requirements; and high divorce rates and out-of-wedlock child-bearing, rising sharply and giving rise to unprecedented numbers of children in single-parent and, if lucky, at least single-income households. Nonsupport or insufficient support from noncustodial parents compounds the problem.

need to know" and its simplistic solutions to all of the world's problems. Let me help you recall it now. It reads:

All I really need to know about how to live and what to do and how to be I learned in kindergarten. Wisdom was not at the top of the graduate-school moun-



have a full-time, year-round worker. Modesto Gomez earns \$9,600 a year wages from a dry cleaner and gets about \$200 a month in food stamps.

Antoinette Thomas' mother was kicked out of her parents' house when she became pregnant at age 16. For most of the last 12 years she has supported her kids through welfare, food stamps, and part-time jobs. A few months ago, she was hired into a full-time job as a nurse's assistant, but her salary leaves her family well below the poverty line.

I shouldn't have to recite the litany of reasons for that poverty—we know them all too well: family wages that have fallen in relation to inflation; global economic shifts that have changed

In choosing a theme for today, I reflected on our responses—as lawyers, as legislators, and as citizens—to these problems. So much of what has been in the news has focused on a dislike or disapproval of the parents' behavior and not on the poor children. Rather than rushing to provide them with the education, health services, nutrition, and guidance that might enable them to break this chain of poverty, we seek to cut them off. Our discussions of welfare reform and stiffening immigration laws seem to focus more on insuring that this new generation of poor children—15.7 million of them—will be undereducated, undernourished, and unhealthy. I considered the essay I mentioned earlier, the "all that I really

tain, but there in the sandpile at Sunday School. These are the things I learned:

Share everything.

Play fair.

Don't hit people.

Put things back where you found them.

Clean up your own mess.

Don't take things that aren't yours.

Say you're sorry when you hurt somebody.

Wash your hands before you eat.

Flush.

Warm cookies and cold milk are good for you.

Live a balanced life—learn some and think some and draw and paint and sing and dance and play and work every day some.

Take a nap every afternoon.

When you go out into the world, watch for traffic, hold hands, and stick together.

Be aware of wonder. Remember the little seed in the Styrofoam cup: The roots go down and the plant goes up and nobody really knows how or why, but we are all like that.

Goldfish and hamsters and white mice and even the little seed in the Styrofoam cup—they all die. So do we.

essays that takes its title from the one I just read, he has published another, entitled *It Was on Fire When I Lay Down on It*. In one of the book's essays that I recently read for the first time, he revisits his kindergarten theme. He tells us:

Here's the tough part of what I know now: that the lessons of kindergarten are hard to practice if they don't apply to you. It's hard to share everything and play fair

But we know.

And it ain't kindergarten stuff.

[Robert Fulghum, *It Was on Fire When I Lay Down on It* (New York: Ivy Books, 1991) pp. 106–107]

A commencement celebration is not the time for discussion of such weighty matters. The celebration of your accomplishments should be just that, a celebration. We should celebrate all of the good that you do, all of

The search for meaning in life is an individual's most personal concern.

And remember the Dick-and-Jane books and the first word you learned—the biggest word of all—LOOK.

Everything you need to know is in there somewhere. The Golden Rule and love and basic sanitation. Ecology and politics and equality and sane living.

... Think what a better world it would be if we all—the whole world—had cookies and milk about three o'clock every afternoon and then lay down with our blankies for a nap. Or if all governments had as a basic policy to always put things back where they found them and to clean up their own mess.

And it is still true, no matter how old you are—when you go out into the world, it is best to hold hands and stick together. [Robert Fulghum, *All I Really Need to Know I Learned in Kindergarten* (New York: Ivy Books, 1989), pp. 4–5]

That essay is by Robert Fulghum, an amateur philosopher. Since the success of his first published collection of

if you don't have anything to share and life is itself unjust. I think of the children of this earth who see the world through barbed wire, who live in a filthy rubbled mess not of their own making and that they can never clean up. They do not wash their hands before they eat. There is no water. Or soap. And some do not have hands to wash. They do not know about warm cookies and cold milk, only stale scraps and hunger. They have no blankie to wrap themselves in, and do not take naps because it is too dangerous to close their eyes.

Theirs is not the kindergarten of finger paint and nursery rhymes, but an X-rated school of harsh dailiness. Their teachers are not sweet women who care, but the indifferent instructors called Pain, Fear, and Misery. Like all children everywhere, they tell stories of monsters. Theirs are for real—what they have seen with their own eyes. In broad daylight. We do not want to know what they have learned.

the difference you make, and through that celebration, we should experience a sense of renewal for even more dedication and devotion to making our society work. Despite the gloominess of that last essay, I think it can serve to do just that.

In earlier times, we would have read or heard the passage from Fulghum's newer book and thought about children in Third-World or eastern bloc countries. Think though about what we are now confronted with in this country—homelessness, inadequate education, children born addicted to cocaine or stricken with AIDS. Children killing children. Parents killing children and each other.

What are the prospects for bettering the lot of children and others affiliated with these troubles? About four years ago, my family came to visit for my daughter's high school graduation. My sister and her daughter live in Detroit, the city with the highest child

poverty rates in this country, according to *USA Today*; 46.4 percent of the children in that city live in poverty. Although, my niece had another week and a half of the school year remaining when they came to visit, my mother took her back to Washington with her for the summer. Why? Not because she herself was suffering in Detroit (my sister is a pharmacist), but because despite their relatively stable middle-class neighborhood, everyone expected Detroit to erupt, if not the next week, sometime that summer. As of June 1 of that year, there would be no more state aid for the indigent, no aid for nutrition for pregnant mothers, and no aid for dependent children. Imagine your despair if you were not able to feed and care for your children. Imagine your community if, despite your own ability to do so, a large portion of the population could not provide for themselves and their families.

Think of the frustration, anger, and despair, the divisiveness and hate, that has led our present-day anarchists to take up arms against the very governmental structure that holds the most promise in the world for peaceful settlement of issues, equitable distribution of plentiful resources, meaningful voice in the system—either for change or for the status quo—and a level of freedom of speech and religion that is not enjoyed anywhere else on this planet. Think of what it must mean if indeed the people who bombed the federal building last week intended to kill the children and elderly who were going about their business peaceably on a Wednesday morning in Oklahoma City.

The Fulghum essay speaks of

children of this earth who see the world through barbed wire, who live in a filthy rubbed mess not of their own making and that they can never clean up . . . [who] do not wash their hands before they eat [because] there is no water or soap . . . [or because they] do not have hands to wash . . . [who] do not know about warm cookies and cold milk, only stale scraps and hunger . . . [who] have no blanket to wrap themselves in, and do not take naps because it is too dangerous to close their eyes. . . .

. . . They tell stories of monsters. Theirs are for real—what they have seen with their own eyes. In broad daylight.

When we take the road less traveled by, we can make a difference in their worlds. We have all of the tools. Despite appearances to the contrary, our educations and personal journeys represent individualized processes of learning, of aspiring, of forming ideas that can be claimed as our own, even as we study with and learn from others and from a largely static canon. Our journeys are private and individualized as well by the nature of the particular set of circumstances that brings each of us to whatever are our tasks.

But we have a responsibility not only to ourselves and our loved ones but also to society. We can fulfill that responsibility by recognizing and assuming that which we have to ourselves: a responsibility to take ourselves seriously, to live, as philosophers describe it, “the examined life.” A commitment to examine life guarantees that life *will* be taken seriously, not just by us but by those around us as well.

The search for meaning in life is an individual’s most personal concern. Some might seek meaning in retreat, retreat to a formula, wrapping up complex questions in a limited set of answers, simplifying the task, circumscribing behavior. Leaders cannot afford this luxury. There are no easy answers. Indeed, often there are no answers at all, just as there is no “find” to the search for meaning in life. It is not something to be found. It is something that *each of us creates by our own actions, by our own behavior.*

We try, by our example, to teach others that we define ourselves by the lives we choose to live, in the goals we choose to make our own. One of my mentors, now president of the City University of New York’s Graduate Center, once remarked:

We can choose to tack up a large canvas on which to paint, or we can choose to live a life whose meaning is defined as nothing more than bits and pieces of scraps of paper.

We in essence define ourselves by the permanence of our contributions, by the effects we have on the lives of others and on the world, by the nature of the changes that our lives produce.

When I was growing up, one of my stated goals was to have some significant positive effect on the lives of at least three people. I felt that was an ambitious goal. I was naive. And I was lucky. As an attorney and as a university professor and administrator, I realize that I am empowered as few others are. Whatever the utilization of the degree, the education I received prepared me to both understand and shape public policy. It prepared me to discern and affect issues related to labor, corporations, property, government, education, foreign affairs, health, and the general affairs of people—the list is long. But the key is to recognize the responsibility that attends such power.

Formal education is a device of modern society to help people create meanings in their lives by giving them tools that enlarge their choices, that offer them the perspectives that can enable them to fashion their own creations. But it is not the only way to accomplish that. You in this place this day are uniquely suited to do the job that needs to be done to ensure that basic freedoms and aspirations are in reach of everyone. That first, idealistic essay of Fulghum’s speaks of “the Golden Rule and love and basic sanitation. Ecology and politics and equality and sane living.” It refers to “a basic policy to always put things back where [we] found them and to clean up [our] own mess” and the desirability of, “when [we] go out into the world, . . . hold[ing] hands and stick[ing] together.” *Beyond* that we can add our voices and our talents in our daily personal lives to making this a better place for everyone, a world that cares, a world different from that in Fulghum’s second essay. That’s my challenge to you. Together we can make it happen.

Marilyn V. Yarbrough is associate provost and a professor of law at the University of North Carolina at Chapel Hill.

PORTRAITS

Lovisa Lyman

Photography by John Snyder

KIF AUGUSTINE ADAMS

INS AND OUTS

I've always been interested in how we use law to organize society," observes Kif Augustine Adams, one of the Law School's newest professors, "... how we use law to include and exclude people and as a 'coordination solution,'" she continues. It was her favorite political science professor at BYU, Noel Reynolds, who used the term "coordination solution" to refer to ordering human interaction. But her consciousness of exclusion and inclusion did not begin as an undergraduate. Growing up in Oregon as a bright student and a "peculiar" Mormon, she knew what it was to sometimes be left out of high school parties and activities. In fact, she occasionally had to exclude herself, like the time she sat in the car for most of a party because guests were smoking marijuana. BYU was easier, with more opportunity to be involved in useful activity.

She got to know husband Stirling Adams when they both volunteered for a Spanish-language magazine for the blind after their Spanish-speaking missions—a project aimed at including both the blind and the Spanish speaking. After Kif and Stirling married and completed their undergraduate degrees, she with a BA in international relations and English, they both opted for law school. She went to Harvard and he to Boston University. Again she was a minority as a BYU graduate, a Mormon, and a woman. None of those things worked against her, however. She saw her time at Harvard as a "mind-expanding opportunity." She particularly enjoyed getting to know her classmates. She chose not to "specialize" in law school but rather to get a basic foundation of the law that would be helpful to her both as a practitioner and as a law professor, which, even then, she planned to become. She was managing editor of the *Harvard Journal of Law and Public Policy* and graduated in 1992 magna cum laude. Stirling graduated at the same time and they both accepted jobs in

Washington, D.C. He went to the Office of the General Council of the Navy, and Kif to Covington & Burling, a large firm known to be a feeder for law school faculties. With the firm's blessing, academics who once practiced there dot the map, while the firm continues to actively seek and welcome new blood.

Covington & Burling's wide-ranging practice includes many of Kif's areas of particular interest: administrative and regulatory law and export and import work—particularly the Export Administration Act. Her work centered on the antiboycott provisions.

In addition to the firm's lucrative areas of practice, it places a high priority on pro bono. In fact it always tops the list in *The American Lawyer* for hours put in and percentage of attorneys contributing their services to prison reform, housing class actions, veteran representation, neighborhood legal services, asylum cases, and the like. Kif soon discovered that at Covington & Burling, high profile pro bono cases like the Baby K case, where the firm represented the mother in a life-support issue, are treated with the same care as a car accident case involving the spouse of an employee.

Among her most memorable pro bono assignments at the firm were two asylum cases, one where the client was included and the other where the client was excluded. The first dealt with a radio journalist from Togo, a small, volatile island between Ivory Coast and the curve of Africa. The journalist had aired broadcasts against the island's dictator illegally. The firm was contacted by the Lawyers Committee for Human Rights and asked to represent him. The man fit the legal criteria for inclusion. Not only had he risked his life for the principles of democracy but he held a PhD and spoke English, French, and the local language. Kif and her associates assigned to the case literally saved the man's life.

Another case was not so successful. A Chinese ship, the *Gold Venture*, ran aground off Long Island. Approximately two hundred Chinese citizens were on the boat. Some drowned. Among those who made their way to shore was a young man from rural China. He and the other survivors were placed in detention by the Immigration and Naturalization Service. INS judges requested help from the

Lawyers Committee for Human Rights in seeking representation for the Chinese individuals. Kif and others assigned to the case had two weeks to prepare for trial. First they had to find someone who could speak the man's local dialect, then they had to put together a defense. The man was requesting asylum based on persecution he suffered because his brother had more than one child, in violation of China's one-child-per-family policy. Complex issues existed regarding persecution based on family-planning policies as a basis for asylum. In addition to the legal issues, the case logistics were complex. Kif made several trips to Winchester, Virginia, where the man was being held, and spent many hours in the jail interview room with a frightened and dis-

Immigration Appeals ended with the ruling that the man should have been in deportation rather than exclusion proceedings and was entitled to a new hearing. At that point the man, upon very poor advice, switched from pro bono counsel to another attorney. The last Kif heard of him, he was still languishing in the Winchester Jail.

After Kif worked on these cases and others like them, she became even more skeptical that inclusion and exclusion laws are fair. Immigration regulations are based on the true premise that we can't include everyone, but when Kif met people who didn't meet criteria for inclusion, yet could make and were making contributions to our society, the regulations seemed highly inadequate.



trustful client and a translator. Despite the fact that professionally it was a disappointment, Kif found the case to be a "culturally fascinating experience." "We tried to convince the man to answer questions straight-on, but that was not the way of his culture. If asked, 'Why did the police come to your house?' he would answer, 'Because the family is one,' meaning that he was persecuted because of his brother." The immigration judge denied the man's asylum request on the basis that persecution under the one-child rule was not sufficient under statutory criteria for asylum. In reality, the law is still up in the air on the issue. Appeal to the Board of

Kif Augustine Adams with husband, Stirling, and daughter, Sofia

When Kif had been at Covington & Burling for almost two years, her daughter Sofia was born. The firm's practice often supported new parents, limiting travel during the first year of the child's life. Quite a number of associates, men and women, had young children, and they freely discussed their concerns about child care, preschools, and work loads. A few months after Sofia was born, Kif was offered a position teaching torts and public international law at BYU. Given

Kif's opportunity, Stirling decided to look for a job in Utah as well. He currently works as in-house counsel at Novell. "Traditional practice was exciting because there were immediate problems to be solved and a unique sort of energy generated," observes Kif. "However, law practice does not offer as many opportunities to look at the whole picture. As a law professor, you are able to think of the bigger picture rather than specific questions your clients need answered immediately." Kif likes looking at larger issues, investigating change and improvement at the policy level.

Though the community at BYU's J. Reuben Clark Law School is more homogeneous than the ones Kif has worked and lived in for most of her life, there will be much opportunity for her particular philosophy: "I want to be judged by whether what I do, whatever it is—work, family, church service—makes a difference in improving people's lives, whether it helps them to belong to a community that they value."

LARRY ECHOHAWK

DREAMER OF DREAMS, MAKER OF REALITY

For Larry EchoHawk there are two dream speeches. One he watched on television with his itinerant oil-rigger father when he was 14 years old. They sat in their little living room in Farmington, New Mexico, following the flickering images on a black-and-white TV, and Larry heard for the first time "the booming voice of Martin Luther King, Jr." The words "transformed me," he avers. "Dreams that had lived only in my soul rose to the surface, and I pursued them with the vigor and single-mindedness of youth." The speech was a revelation to a boy who had sat at the back of one classroom after another, cringing and staring at his shoes during history lessons where he and his father's people were referred to as savage, heathen, renegade, and bloodthirsty. He began to hold his head up a little more after that August night in 1963.

His father was also touched but not as optimistic. Ernest EchoHawk had been sent away from the Pawnee Reservation in Oklahoma during the depression to a boarding school where the main thing he was taught was how to not be an Indian. If he had ever believed in the American Dream, years of following low-paying jobs and dulling his memories and inadequacies with alcohol had almost erased any hope. Gone the once proud heritage of the first EchoHawk, Larry's great-grandfather. "To the Pawnee, the hawk is a symbol of a silent warrior," Larry once wrote. "My great-grandfather was known for his bravery, but he was also known as a modest and quiet man. He did not speak about his own deeds, but word of his courage 'echoed throughout the village.'" That family pride had dissipated. In fact in the early sixties, it looked like the EchoHawk family itself was headed for break up. Larry's father and non-Indian mother had been through too many troubled years. The six children, four older than Larry, were facing a bleak future.

Just a year before the King speech the family situation had begun to improve. A Mormon neighbor sent stake missionaries to visit the EchoHawks. Those visits changed the direction of the family for years to come. For the first time the family attended church together. To be baptized, Larry's father gave up alcohol. Little by little, Ernest began to again take pride in his heritage, which would later culminate in a return to the Pawnee Reservation and the traditions he had been beaten and punished for remembering. Larry's mother, who had not finished high school, now saw each of her six children obtain a college education. Three sons and a daughter graduated from Brigham Young University, all on either athletic or academic scholarships. Larry came to BYU on a full-ride football scholarship. He played in every BYU football game from 1967 to 1969, was a two-year starter at defensive safety and earned All-WAC academic honors as a senior. With this kind of accomplishment it was natural that he should consider a career in sports.

That was not to be, for at BYU he heard about another dream speech that opened even wider vistas and possibilities. Spencer W. Kimball, Church president and ever advocate for the Lamanites, spoke to a group of Native Americans:

[In 1946] *I had a dream of your progress and development. Now this is precisely what I dreamed; this was my vision for the people of the Lamanites. I got up from my bed and wrote my dream. This is what I wrote:*

As I looked into the future, I saw the Lamanites from the isles of the sea and the Americas rise to a great destiny. I saw great numbers of Lamanites in beautiful homes that have all the comforts that science can afford. . . . I saw the people of Lehi as engineers and builders, building lofty bridges and great edifices. I saw you in great political positions and functioning as administrators over the land. I saw you as heads of government and of the counties and states and cities. I saw you in legislative positions, where as legislators and good Latter-day Saint citizens, you were able to help make the best laws for your brethren and sisters.

I saw many of you becoming attorneys and becoming the solution of the world's problems. . . . I saw you as owners of industries and factories. . . . I saw [you] as doctors, as well as lawyers, looking after your people.

Now, that was my dream. Maybe it was a vision. Maybe the Lord was showing to me what this great people would accomplish.

Suddenly Larry's possibilities expanded to include a whole list of other professions. At about this time older brother John, the first Native American graduate on the American Indian Law Scholarship, suggested that Larry could do much good for his people if he were a lawyer. Larry applied and was admitted to the University of Utah, where he also received an American Indian Law Scholarship. He and his wife, Terry Pries, headed for Salt Lake City, where the hardest part of attending law school would be cheering for the Utes. After three years Larry decided they weren't as bad as he had been led to believe.

Since his graduation in 1973, it appears that Larry has taken President Kimball's dream as his personal blueprint. First he served the Indian people by working for the California Indian Legal Services. Next he opened a private practice in Salt Lake City where most of his clients were Native Americans. The practice expanded to seven attorneys, still maintaining a largely Native American client base, before Larry left in 1977 to become Chief General Counsel to the Shoshone-Bannock Tribes at Fort Hall, Idaho. The tribes had always been represented by Anglo attorneys, and Larry competed with sev-

tunities came his way. He argued a case before the Supreme Court of the United States. In 1992 he spoke at the Democratic National Convention on the final night to an audience of 20,000 people and nationwide television. In that address he talked, as he often does, about the values he grew up with and the importance of education as an opportunity all should have, no matter where they come from. He was a welcome visitor to the White House. Still he put the needs of his state foremost.

It was with his state in mind that he opposed casino gambling on the reservation. Larry had been elected to his



Larry EchoHawk, '94 Idaho gubernatorial candidate, joins the BYU law faculty.

eral large firms for the position. He continued in their service for eight and a half years. During that time, he was elected to the Idaho House of Representatives in 1982 and re-elected in 1984. He became Bannock County prosecutor in 1986. (Bannock is the fourth largest county in Idaho and borders on Fort Hall Reservation.) He continued as prosecutor until he was elected in 1990 as attorney general of Idaho, the first Native American in U.S. history to be elected to a statewide office. In this position other honors and oppor-

office with tribal support. During the campaign, he cautioned the tribes that if he were elected he could not be the tribal attorney in the statehouse and that they now needed to retain their own counsel. Nevertheless he promised, "Though we may disagree on issues, I will never disagree with you in spirit." In his new office he supported the Indian viewpoint until the issue of casino gambling arose. For the first time he opposed a tribal stand on an issue. Reservations are under federal jurisdiction and Indian gaming is controlled by the federal government. None-the-less, federal law does not go against established state law and constitution. A window in the existing Idaho law could have been construed to allow casinos on the reservation. A special

legislative session was called, and Larry's office drafted a bill to patch up ambiguous language and outlaw any form of casino gambling anywhere in the state. The night before the session, a Republican legislator visited Larry's home to request that he appear on the floors of both houses to speak in favor of passage. Tribal representatives would be defending their side of the issue as well. It was an uncomfortable situation, but Larry agreed to appear. In his address he reminded legislators that this was a matter of state policy and that they should consider the wishes of the state as a whole. The issue went to ballot and passed by 60 percent. (The tribes subsequently filed suit, but the state prevailed.) As Larry left the capital that day, he wondered if he could ever run for office again.

As election time 1993 drew near he would probably have run for attorney general had he not been drafted as a gubernatorial candidate. He decided to run because as the first Native American governor in the United States he would have a wider arena in which to serve. He ran with several disadvantages, however. He entered the race months after the other six candidates had declared, and he ran as a Democrat in a Republican state. Still, in the primaries he garnered 74 percent of the vote in a three-way race. But the Republican sweep that affected the whole country bowled over Idaho as well, and Larry lost the race. He has no regrets. "It was the right thing to do," he insists. "Even had I run for attorney general," he goes on philosophically, "I might not have survived against such a tide."

Idaho's loss is BYU Law School's gain. Larry is now teaching criminal law and federal Indian law in the modest, unassuming way of his great-grandfather, while his deeds echo around him. He carries the quotation by President Kimball in his planner, the words of both dreamers in his heart.

JIM RASBAND

THINGS OF IMPORTANCE

Mary will often deflect a debate with, "Well, if it's that important to you, . . ." Jim Rasband, new faculty member, says about his wife. "Even if I get mad, she's on an even keel. She won't be knocked off of it. I wish she'd argue with me sometimes." He grins in a way that says he is really glad to be married to a peacemaker and a peace keeper.

Keeping the peace was an issue when Jim decided to go to law school. When he was growing up on the Monterey Peninsula in California, law was a hiss and a byword around the family dinner table. Jim's father was a physician specializing in radiology. As medical malpractice and personal injury cases burgeoned, he was invited to be a member of the board of directors of NORCAL, a physician-owned insurance company established in an effort to keep insurance rates down. "Though my father

didn't try to influence my career choice," says Jim, "he had little good to say about attorneys. When I chose law school, there was an unspoken agreement that I would not specialize in personal injury or medical malpractice." Interestingly, along with water law, Jim is teaching torts, but he sees no incongruity there: "Torts is one of the last great common-law courses. It epitomizes the majesty of the common-law tradition. Teaching and learning torts is thus much more about legal reasoning and process than it is about learning to practice in the personal injury bar."

Jim describes his and his brother Win's upbringing as "traditional." "We were given the opportunity and encouragement to pursue our interests," says Jim. "Early on my interest was sports of any kind. Any significant aspirations ended at junior high, however, when I learned that being the top athlete in a small elementary school was going to have to satisfy any need for memories of on-the-field heroism."

Many of Jim's early summers were spent in Heritage Halls with his mother and brother while his mother pursued her degree in English. "My mom and dad's tenacity to get that degree taught me a lot about the value of education."

Jim attended a private high school in Pebble Beach. He finished his freshman year with his usual 4.0 while playing baseball, lacrosse, and basketball. His teammates razzed him about his grades and to "ensure credibility" he went down to a 3.0 his sophomore year. Once established as a non-nerd, however, his grades rose with impunity.

When Jim arrived at BYU at barely age 17, he didn't have law in mind. In fact his main interest was learning. He was like a kid in a candy store. He took a little of every thing—Hebrew, Korean, philosophy, Middle Eastern history, politics, Arab-Israeli conflict. When finally he had to decide, one major couldn't cover the territory, so he settled on two: English and Near Eastern studies. After a mission to Korea, he added a Korean minor. Always in the back of his mind was academics. At one point he considered a PhD in English and teaching, a route chosen by two of his favorite authors, Tolkien and C. S. Lewis. In the meantime he had met Mary, a chemical engineering major on her way to a master's degree. They married, and as he neared graduation ("I was one of those 190-hour seniors you hear so much about these days."), he decided to apply for law school rather than pursue an English PhD. Though the decision was difficult, he saw law, unlike English, as a real-life application for academics—with interesting, intellectual debates as well as an opportunity to deal with the problems of living antagonists and protagonists. He was accepted by his first choice—Harvard—and became the only BYU graduate in his first year class.

When the couple headed for Cambridge, Mary had only her master's theses to complete for her degree, which she did between the births of the couple's first two children while Jim was in law school. "I actually enjoyed law school," avers Jim, "especially my first year." Enjoyment diminished somewhat during the second and third years with law review stress.



After graduation he spent a year clerking for Judge J. Clifford Wallace on the Ninth Circuit before moving on to Seattle, Washington, to work for Perkins Coie, the largest firm in the Northwest.

One of Jim's first assignments was in the firm's labor group. There he had a revelation: Unlike at school and the clerkship, the facts did not come neatly packaged. They had to be discovered and painstakingly developed. Quickly he came to enjoy doing the fact development that is the bread and butter of litigation. Early on in his time at Perkins, he represented the Seattle School District in challenges to its bilingual and special education programs. He also performed consulting for various agencies and municipalities seeking to establish women- and minority-owned business preference programs. Soon he added some natural resource work, and he seemed to find his niche. He worked on endangered species issues as well as a number of Indian treaty issues. (During this period he also began doing pro bono work for the Nature Conservancy.) The case that most stands out dealt with tribal shellfish rights. Jim represented family farmers, many of whom had supported themselves for five generations with their shellfish beds. He characterizes these clients as "salt of the earth." Shell-fishing rights had never been carefully spelled out, and Jim found the history of the case fascinating. It was litigation at its highest. "The attorneys for the tribes were fine people, and their work was high caliber." This case particularly reinforced and fueled his interest in natural

Jim Rasband with his wife, Mary, and children (l-r) Jimmy, Danny, Reese, and Rachel.

resource law, encompassing as it did issues of sovereignty and division and allocation of natural resources—on which much of his scholarly work now concentrates. It also brought to the fore the things he likes most about legal practice—"collaboration with colleagues and clients in researching, writing, and then trying a case." What he won't miss about practice is the aggressive litigation that sometimes overshadows rational discussion—the win-no-matter-what-the-cost attitude. When litigation degenerates to that level, Jim feels like saying, "If it's that important to you . . ."

What is most important to Jim Rasband?

Being a good father to his four children: Rachel Maria, age 9; James Anders, age 6; Danford Edwin, age 4; and Reese David, age 19 months.

Being a good husband. "It's a challenge. When we get away alone, it takes a few hours for the adrenalin to slow down so we can really talk. It's hard to really talk in the brief snippets between hearing about the size of the latest grasshopper catch, looking for missing hamsters, and serving as a tackling dummy."

Being a good Christian. For Jim that includes taking an active role, serving others, and living with integrity.

Does he always succeed? "No," he admits. "I'm often selfish and flawed, but I don't give up on important things."

LAW SOCIETY MEMBERS
CALLED AS MISSION
PRESIDENTS

This past summer the First Presidency called several new mission presidents who are members of the J. Reuben Clark Law Society. Henry K. Chai II, BYU Law School '79, is serving as president of the Philippines Manila Mission; Sterling D. Colton, Stanford Law School '53 and member of the Mid-Atlantic Chapter of the J. Reuben Clark Law Society, is serving as president of the Canada Vancouver Mission; Michael L. Jensen, BYU Law School '78, is serving as president of the Germany Hamburg Mission; A. Keith Thompson, general counsel, Pacific Area, The Church of Jesus Christ of Latter-day Saints, and chair of the Pacific Rim Chapter of the J. Reuben Clark Law Society, is serving as president of the New Zealand Wellington Mission; and William H. Wingo, BYU Law School '76, is serving as president of the Mexico Monterrey North Mission. In addition, the Law Society welcomes back two members who have recently completed their service as mission presidents: Anthony I. Bentley, Jr., Argentina Buenos Aires North Mission; and Marlin K. Jensen, New York Rochester Mission.

Henry "Keo" Chai and his wife, Judy, met at BYU in 1974 within a year of his return from the Philippines Manila Mission. They are the parents of six children: Nathan, 18; Kristin, 16; Erin, 13; Stephen, 12; Ryan, 6; and Jordan, 3. All of their children have accompanied them to Manila, with the exception of Nathan, who is

serving as a full-time missionary in the Denver South Mission.

Keo worked for the Salt Lake City law firm of Snow Christensen & Martineau from graduation in 1978 until 1992 and then helped organize the firm of Blackburn & Stoll. His practice focused on workers compensation. President Chai's partner, Michael Dyer, reports that after three months in the mission field, Keo is working even harder than he did in the practice of law. Keo feels that his experience in organizing a new law firm prepared him for organizing a mission. He says that his nine years as stake president of the West Jordan Westbrook Stake prepared him for frequent speaking assignments as a

mission president. In addition to his normal workload, President Chai is learning Tagalog so that he can converse more freely with members and investigators.

After 15 years of practice, which include 11 years with the San Diego firm of Luce, Forward, Hamilton & Scripps, Michael Jensen has left labor and employment law and litigation to serve as president of the Germany Frankfurt Mission. This calling is a return to Germany for Michael, who served in the Germany Munich Mission from 1972 to 1974. He and his wife, Jean, are accompanied by their six children: Matthew, 17; Nathan, 15; Jason, 12; Brooke, 11; Justin, 9; and Jacob, 4. The children attend the International School in

Frankfurt. Jean, who taught American literature at Ricks College before their marriage, is looking forward to increasing her family of six sons by approximately 300 elders and sisters over the next three years. Church service is not new to Michael. He served as the bishop of the North Hollywood Third Ward, as stake president of the Penasquitos Stake from 1986-1994, and as regional representative in the San Diego and Blythe Regions for two years.

Six other law graduates are serving or have served as mission presidents: Rulon Munns '76, Mark Zobrist '76, Von Packard '77, James Hamula '85, Steve Snow '77, and Monte Steward '76.

Keo and Judy Chai



A TASTE OF AIR FORCE
LAWYERING

by James Gerard McLaren '89

"You're crazy!" they said in unison. It wasn't quite the reaction I had expected. I had just told my law school friends of my plans to join the Air Force Judge Advocate Corps. Apparently they had little respect for military lawyers. Four years later, having finished my tour, I thought I'd set the record straight.

I first became interested in the Air Force when I was turned down by all the East coast firms with international law offices abroad. I had studied at Glasgow and Edinburgh, and

Michael and Jean Jensen

thought I might get an opportunity to work in England. However, the tone of letters of rejection from firms with names like Goldberg, Finkelstein & Sapperstein left me wondering whether my qualifications weren't up to snuff, whether BYU didn't have a big enough reputation, or whether I didn't have the right last name. I saw an ad in an *ABA Journal* where Imwinkelreid touted the virtues of being a judge advocate (JAG). He writes books, so he should know. I thought this might be a good opportunity to work in England. I applied to the Air Force (they have more slots in England than the Army or Navy do) and went for an interview at Hill Air Force Base.

At the interview the colonel in charge of lawyers at the base liked me. A top-third finish in law school and moot court/law review are expected. There are about 160 applicants for every 20 slots. I was asked if I liked courtroom work. Apparently most recruits are attracted by the thought of litigating their own cases instead of letting the senior partners get the glory. I wasn't at all interested in the courtroom. "Too bad," he said, "that's where you'll be spending a lot of your time."

The Air Force tried to convince me that England was out of the question for a first assignment, but a little persistence paid off. I was selected and offered a choice of England, Germany, or

North Dakota. I ended up at a base near Cambridge, a mile from Prime Minister John Major's private residence. I rented a home for my wife and three children in a quaint village called Hemmingford Abbots. It had the atmosphere of an Agatha Christie novel about murder at the Rectory. Most of the homes were thatched, most of the residents tweedy. Our neighbors were delightfully friendly, except when someone attending bishopric meeting at our house would park on the verge of their huge, manicured lawns.

The colonel had been right. Much as I hated it, I was thrust into the courtroom trying criminal cases. However, after half a dozen or so courts-martial, I found myself relishing the challenge. I found I had a knack for closing arguments and rebuttal, though my cross-examination was never as exciting as Perry Mason's. At least I've learned never to ask that "one question too many," or to ask the defendant in open court to try on the gloves found at the crime scene, or, as happened to me once, to try to lay a foundation with the wrong witness.

The military judges were very sympathetic toward fledgling litigators. I learned most when Judge McShane was on the bench. With every objection he would expect you to quote the federal rule of evidence number and be specific in the language of the rule. When defense stated objections, he would expect a prosecution rebuttal. Sometimes defense would come up with an unexpected objection. If you didn't have a clue, you at





least scored points by standing up and saying “Frivolous!” in an airy manner. The judge would not press the matter farther, knowing that you were clueless. I tried about 16 courts in all and could have done 50 if I’d wanted to. I’m glad now the Air Force made me do it. Every time I jump to my feet and state an objection, I think of Professor Kimball’s classes. Maybe he’d give me a better grade if he could see me now.

I had a unique experience when I was sent to Holland as an investigating officer (I.O.) in a fraud case. I.O.’s perform the same function as the grand jury. Kevin Cutler, an LDS JAG, was prosecuting. Mark Strickland, also an LDS JAG, was defending. The three of us were in a courtroom in the middle of Holland serving three different functions. I resisted the desire to ask the accused if he was LDS too. I quickly got business out of the way, took some leave, and settled down to touring Holland and Germany with my wife, Kathleen. The Air Force

partially paid for the car ferry, and our military gas coupons enabled us to fill up anywhere at one fourth of the local cost. Now that’s living!

We frequently visited my family who still live in Glasgow. We visited antique markets, Elizabethan homes, and medieval castles. We ate in pubs, and Kathleen even went to tea at Lord and Lady Hemmingford’s residence, called, you may have guessed, “The Old Rectory.” I went to local courts and to the appeals court in London to view cases. I even pursued an advanced law degree at Leicester University.

Entry-level judge advocates are usually called on to work in one of three subject areas: justice, civil law, or claims. These rotate roughly each year. By the end of three years you may know quite a bit of criminal law, have written 100 opinions on contracts, environmental, and labor law, and have negotiated 50 tort claims. One of my most memorable days at work was investigating a claim made by some-

one who asserted that he had a government listening device implanted during a hemorrhoidectomy. I’m sure all Orwell devotees will sleep sounder knowing that I got to the *bottom* of the case, and the claim was without foundation. JAGs also do “legal assistance.” During my busiest year, I had 947 legal consultations on *inter alia*, taxes, divorce, wills and estates, consumer law, real estate, landlord/tenant, and immigration. At times it felt like “M.A.S.H.,” doing meatball law and seeing six divorce clients in just under three hours. However, if you want to get your feet wet, this is this place.

My job gave me the opportunity to travel in Europe and to be close to my family in Scotland. The academic credentials of many of the JAGs with whom I worked were impressive. Most of the JAGs were great people to work with and to work for. There was always good camaraderie and excellent work ethic. The hours were reasonable with only occasional call-outs at midnight

or 5 a.m. By day I might be dining with British solicitors, by evening donning full chemical warfare equipment and sheltering under a desk during an exercise. My four years met all my expectations and made me a much more competent lawyer. Air Force lawyering may not have the respect it merits. Many JAGs stay on because jobs after the military are scarce. One thing’s for sure though, I wasn’t crazy.

James Gerard McLaren '89 now works at Hill Harrison Johnson & Smutz, PC, in Provo.

MAKING SENSE

Gary C. Bryner '94

A Review of Frederick Mark Gedicks' The Rhetoric of Church and State: A Critical Analysis of Religion Clause Jurisprudence. Duke University Press, 1995.

The Supreme Court’s rulings on religious freedom and establishment of religion are among the most unpopular of the Court’s decisions and are more widely criticized, challenged, and ignored than perhaps any other constitutional law area. Scholars and practitioners have struggled to make sense of these decisions and to deduce from them a coherent theory of religious freedom. Dissatisfaction with the Court’s religion clause decisions has produced a proposed Religious Equality Amendment to the U.S. Constitution and other constitutional amendments aimed at reversing the Court’s decisions. The Court’s inability to provide

a coherent constitutional framework for these issues is part of a much broader ferment over religion's role in American politics and society.

In *The Rhetoric of Church and State*, Professor Frederick Mark Gedicks of BYU's J. Reuben Clark Law School argues that the Supreme Court has greatly contributed to the controversy over the place of religion in American life. In the Court's establishment clause cases, it generally requires governments to have secular purposes before interacting with religion, but its holdings are inconsistent. Even more troubling are the Court's decisions under the free exercise clause. In the past, the Court contended that religious freedom was to be viewed as are other "fundamental" rights: governments could not infringe on such rights unless there was a compelling interest and the means selected was the least burdensome possible. While this test appeared to provide protection for religious liberty in theory, in practice, most plaintiffs and nearly all non-Christians lost challenges to government actions infringing on their exercise of religious belief. In its widely criticized 1990 decision, *Employment Division v. Smith* (494 U.S. 872), the Supreme Court announced a less stringent test for governments to meet in actions that limit religious exercise, making the theory of religious freedom correspond more nearly with the Court's practice—and posing a serious threat to that freedom.

The Rhetoric of Church and State is a thoughtful,

creative, and effectively developed endeavor to deduce a theory that accounts for what appears to lack any principle or coherence. Professor Gedicks provides a framework that can be used to make sense of what has in the past largely escaped explanation. His theory is not predictive in the sense that it can be used to predict how the Court will rule in its next religious establishment or freedom case. Still, it provides a helpful framework for understanding what the Court has done and why it has fallen so short dealing with these difficult issues. Readers will learn much from this thoughtful and elegantly argued book.

Professor Gedicks finds the root of the Court's confusion over church and state in its reliance on two competing paradigms or discourses concerning church and state.

The first discourse, religious communitarianism, holds that religious and political institutions are physically separated but have the same goals; separate institutions share political, cultural, and social power. Religion assumes a fundamental role in fostering the values and practices that are essential for civilized society. Faith, tradition, and authority are sources of these values. Government is not neutral, but plays an active role in culture by promoting religious traditions and practices that reinforce these core values. Community is paramount.

These are largely conservative cultural values—support for the nuclear family, public acknowledgment of

God, and opposition to abortion, feminism, gay rights, and sex education in schools. While government cannot coerce belief and must protect basic rights of religious dissenters, it can and must encourage citizens to embrace the moral principles reflected in conservative religion. Tolerance but not neutrality is the standard: "when widespread commitment to certain values is essential to the preservation of the good society, government can hardly be indifferent to the task of encouraging those fundamental values and discouraging or prohibiting other values that threaten the foundational ones" (p. 13).

In contrast, secular individualism strictly confines religion to the private sphere. Government is neutral between the demands of competing religious groups and between religious and nonreligious interests. Government can only act if it has a secular purpose. Government actions or law must rest on a foundation of reason; knowledge is discovered by reason and cannot be established through an appeal to religious authority or tradition; and religion is an irrational and regressive force in society that must be strictly confined to the private sphere.

In this secular individualism, religious belief is a private matter free from government interference, and insulation of public life from religion is essential to ensure individual freedom and political balance. The individual is paramount: "The emphasis is on preservation of individual choice through value-neutral procedures, so that individuals remain free

to act upon the truths they discover in the exercise of their own reason. Secular individualism permits religion to influence government and public life, but only indirectly, as the effect of private choice rather than as the result of direct government encouragement or assistance" (p. 13).

The culmination of a continuous process of secularization and privatization of American life, secular individualism has replaced religious communitarianism as our public, constitutional discourse. While a religious communitarian approach occasionally surfaces, the secularist discourse dominates. In every area of religious clause jurisprudence, the Court has replaced the discourse of religious communitarianism with secular individualism.

As Professor Gedicks argues, the two discourses somewhat parallel a debate among legal scholars, political scientists, sociologists, and others about the American Founding and its understanding of individual rights. The republican tradition assumes "an objective conception of the public interest and a state that could legitimately promote virtue"; in contrast, liberalism assumes "individual self-interest as the only legitimate animating force in society" and denies "any conception of an autonomous public interest independent of the sum of individual interests" (p. 21). Republicanism permits government to promote virtue, while liberalism requires government neutrality concerning religion in public life. However, theories of republicanism do not agree

on the role of religion in such a society or the source of truth. Liberals disagree over whether religious practices could be exempt from otherwise neutral laws.

Professor Gedicks believes three problems result from the Supreme Court's inability

The second shortcoming is that even as the Court has shifted ideologically to the right, it has still relied on a secular individualism to view government involvement in or support of religious activities. The reasoning that rejects inter-

able only if they can be secularized. So, the Court denies the religious nature of activities it seeks to protect and weakens public commitment to religion.

The third problem is the result of the Court's jumbled jurisprudence. The Court has failed to provide clear and dependable guidelines for determining what is required to ensure governmental neutrality about religion, secular purposes underlying government actions, and the protection of religious freedom. This failure has spawned tension. Overwhelming public support is for the religious communitarian view, and there is corresponding little support for secular individualism.

The justices have failed to recognize the subjectivity of the discourse they embrace. The Court gives preference to secular, objective knowledge over that which is subjective or based in religion. As a result, religious freedom has not been secured. The Court has failed to provide exemptions for religious practices such as an Orthodox Jew wearing a yarmulke in the military or the government halting a highway construction project because it prevented a Native American tribe from worshipping.

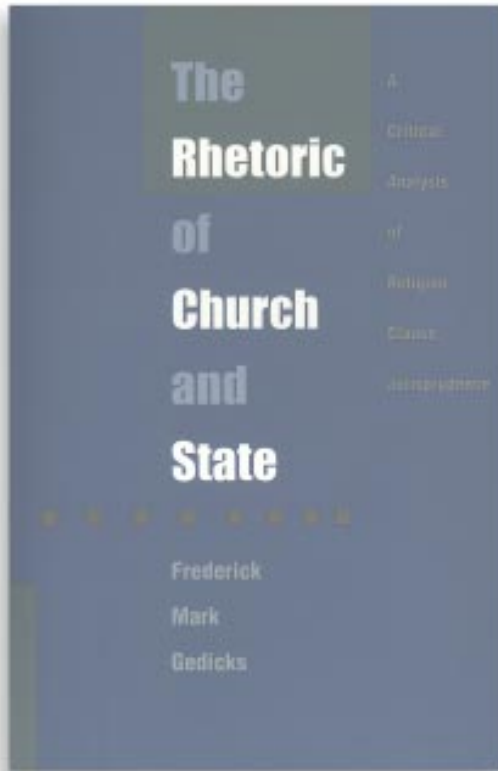
Several chapters of the book show these problems and review in detail the major Supreme Court cases that have arisen under the First Amendment's religion clauses. In chapter three, Professor Gedicks argues that the idea of neutrality is manipulated in deciding cases concerning public aid to parochial schools. The Court relies on a secular

individualist discourse that requires governments to be neutral regarding religion: aid that flows directly to religious schools is unconstitutional, while assistance aimed at individual students is acceptable.

In the equal-access cases, reviewed in chapter four, religious groups can be given access to public facilities if they are simply one of many groups and if assistance to religion is incidental. A neutral position toward religion does not justify denial of financial and other benefits to religious schools; denying government aid to parochial schools can only be viewed as neutral if government educational funding is insignificant—an implausible position given current spending levels.

Chapter five discusses cases where the Court has permitted aid to religiously sponsored colleges and social service agencies and upheld property tax exemptions for churches but failed to acknowledge the value of these organizations as religious bodies.

Chapter six charts the failure of the Court to find ways of accommodating religious practices. Professor Gedicks is particularly critical of the Court's decision in *Employment Division v. Smith*. The Court's decision is consistent with a religious communitarian outcome, but it tries to fashion a rationale through secular individualism. In a several cases, the Court has required that government actions that burden religious freedom or religious-based objectors be justified by a compelling interest. In some cases, such as



ty to deal with these competing discourses. Two problems are the shortcomings in the Court's reasoning. First, the Court's decisions appear to be confused and inconsistent because different holdings rely on different theories. Since the theories are contradictory, the decisions seem erratic and unpredictable. Under the Establishment clause, for example, states may provide religious schools with maps and films but not textbooks. They may assist schools with busing students to and from school, but not with field trips.

twining of church and state is now used to defend close ties between the two. For example, in upholding Sunday closing laws, prayers in legislatures, religious displays on public property, and some assistance to religious-based higher education institutions, the Court relies on a secular individualist value of neutrality instead of the religious communitarian view that religion plays an important social role and should be encouraged. Under the Court's view, public religious expressions are accept-

payment of social security taxes, the Court has found such an interest. But it abandoned that standard in *Smith*, “effectively repealing” the free exercise clause (p. 108). Government can now reinforce religious values that contribute to social order while rejecting deviant religious beliefs. The Court “uses a secular individualist analysis to justify what is a religious communitarian result” (p. 116), and ultimately fails to ensure religious liberty.

Professor Gedicks concludes that the secular individualist approach should be rejected because it cannot provide an effective guide for the Court’s religion clause decisions. It is also unable to produce a coherent theory for exemptions to the free-exercise standard that prohibits religious discrimination and ensures real religious liberty. The discourse itself is also highly unpopular. But a religious communitarian discourse is not a viable option, because of the way it operated in the 19th century “to justify legal persecution of religious, racial, and ethnic minorities” and continues to fail to protect “those who find themselves outside the religious mainstream in the locality in which they live” (pp. 122–23). Unfortunately, secular individualism and religious communitarianism are, according to Professor Gedicks, “the only two imaginable alternatives” (p. 125), and a new discourse will only emerge when justices and others become convinced of the failure of secular individualism to provide the basis for church-state relations.

A CREATIVE READING
BETWEEN THE LINES OF
HISTORY

Michael Patrick O’Brien*

A Review of Timothy Burton Anderson’s The Reign of the Stavka. Grossmont & Diehl, 1995.

The late 1980s and early 1990s were a momentous, evolutionary, and historical time to be alive. Just think about what happened.

The Berlin Wall fell.

coup and while initiating the one that brought to an end the existence of the Soviet Union as a nation.

Nearly a half century’s worth of maps were redrawn with almost a wink of the eye and the nod of the head. It all seemed to happen so fast, so easily—maybe too fast, too easily?

Such suspicions are at the heart of Timothy Burton Anderson’s first novel, *The Reign of the Stavka*.

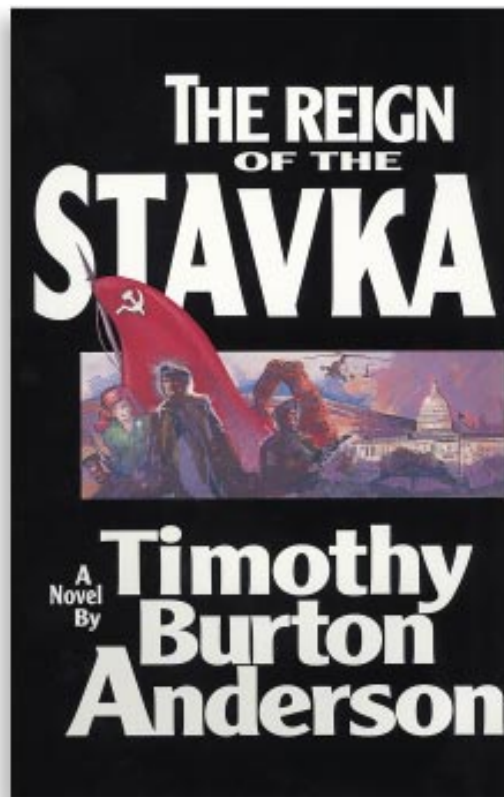
Anderson is a 1978 graduate of the J. Reuben

legal counsel for a corporate subsidiary of the Soviet Ministry of Aviation, leading to regular visits with the KGB and, as you might expect, the FBI, the latter intrigued with the motives of a cadre of Soviet businessmen interested in southern Utah. In his spare time, Anderson now writes novels.

In *The Reign of the Stavka*, Anderson spins an enthralling, Tom-Clancyesque tale linking dead cosmonauts, elite KGB troops, and the polygamists of southern Utah in a dramatic conspiracy played out on the streets of Moscow, in the Caucasus Mountains of former Soviet Republic Georgia, and in the shadows of the red rocks of Utah’s Color Country.

The Reign of the Stavka starts with the suspicion that the fall of the Soviet empire happened too fast and too easily. Anderson provides a fictional explanation of why it happened the way it did. In the world of Anderson’s first novel, democratic Russia may just be the most clever geopolitical strategic gambit since the Trojan Horse.

Whether or not this gambit succeeds rests on the



Czechoslovakia’s dissident playwright became its president. Solidarity came to rule the Poland that had banned it just a few years before. The Baltic Soviet republics again gained independence. A Chinese Statue of Liberty was raised in Tiananmen Square. Boris Yeltsin stood on a tank to thwart one

Clark Law School and a shareholder with the Utah law firm of Jones, Waldo, Holbrook & McDonough. He practices in the fields of litigation and international commercial law and lives with his wife and three children in St. George, Utah. In the early 1990s, Anderson worked as U.S.

*Mr. O’Brien practices law in the Salt Lake office of Jones, Waldo, Holbrook & McDonough. He holds degrees from the University of Utah College of Law and the University of Notre Dame. The substance of this review is in no way based on the gracious Christian charity Tim Anderson bestowed on Mr. O’Brien after last year’s BYU–Notre Dame football game.

wits of the novel's three main characters. The novel takes the reader through seven eventful months in the lives of these main characters. One is a Dutch computer businessman who served an LDS mission in southern Utah and suddenly finds himself returning to his mission field as executive director of The Russia Center, a new cultural facility and historical museum to be built in St. George.

The second character is a colonel who, having served both the Soviet and now the Russian KGB, finds his own internal struggle symbolic of the intense struggle for the future and the freedom of Russia. Finally, there is the young, untested, diamond-in-the-rough Washington County deputy sheriff who finds his life suddenly and surprisingly intertwined with the other two main characters and with a global struggle he cannot even begin to fully contemplate.

Anderson also has created other minor—but nonetheless fascinating—characters for his book. Watch out especially for the female KGB operative with a chilling ambition and multiple disguises.

Interesting too are the female victims of the excesses of polygamy cults, characters that could be reflections of Anderson's own extensive efforts to help real life victims of the same.

The plot of *The Reign of the Stavka* is a page-turning, thrilling conspiracy that regularly manages to put you back on the edge of your seat just when you're sure you've got it all figured out. The book is slow only during its initial pages when Anderson, like any good

trial lawyer, lays the foundation from which he launches his story.

Anderson's writing, however, is not stereotypical lawyerly. He tells a crisp, uncluttered, and interesting story without once referring to "the party of the first part" or bogging down his text with a "hereto" or "whereas." He also crafts some memorable phrases, for example, describing the often corrupt Russian bureaucracy as the "land of the bribe and the home of the fee."

The Reign of the Stavka is a fine first book by a Utah lawyer/novelist who shows a great deal of potential. By reading between the lines of history and asking questions such as "what if?" or "how about?" as he does in *The Reign of the Stavka*, Anderson has already established a unique personal style that can be applied to many different settings. Based on Anderson's first novel, we can look forward with excitement to where he next sets his creative sights.

WELCOME HOME R & B

While for music aficionados in mainstream America, R&B may stand for "rhythm and blues," at the BYU Law School the initials stand from Rex and Bruce. Their collaboration will be remembered long after contemporary "r&b" tunes have been forgotten. It is a collaboration for the ages. In the history of the J. Reuben Clark Law School and the Brigham Young University, it is virtually impossible to think about one without the other.

Over twenty-three years ago these two young lawyers from Arizona and Utah left

law practice and threw in their lots with a grand adventure: the formation of the J. Reuben Clark Law School at Brigham Young University. They have left their indelible marks on the building: after all, Rex fought for the white cast stone facade over GI pale-yellow brick, and no one will forget that it was Bruce who commissioned the Valoy Eaton paintings of famous courthouses which grace the Law School foyer (not to mention the Hafen autumnal color scheme which has been a part of the Law School since 1975.) More importantly they have left their marks on their students and colleagues over two decades.

Although their lives have taken interesting turns and their careers have been more rich and varied than they would have imagined, the J. Reuben Clark Law School has remained the touchstone. A striking similarity in their careers has been their willingness to put personal desires and personal projects in the background and focus on the duties to which they are assigned.

Rex's life has extended from the university to the Justice Department and the

Office of Solicitor General, and back to the Law School; Bruce's has extended from Ricks College to the deanship, the provost's office, and back to the Law School. Each has been given weighty responsibilities on several occasions and each has completed them with honor.

Leadership roles have not kept our quintessential lawyers from their ties with scholarship and the law. Rex, the advocate, has continued and will continue to try cases before the United States Supreme Court; Bruce, the scholar, has continued and will continue to be on the cutting edge of legal scholarship in family law.

The law school is pleased that each will be given a deserved sabbatical before returning, but more pleased that the sabbaticals will be of fairly short duration. During the 1996-97 school year the students, faculty, administration and staff will be waiting with open arms to welcome them home.

Alumni envy the students who will learn about the constitution, about law governing familial relations, and most of all about life—from Rex and Bruce, the law school kings of R&B.

