

# THE INDISPENSABLE LAWYER

By

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## HONORED ALUMNI LECTURE

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I am honored to have this opportunity today, and happily surprised to see so many of you here. I will explain that surprise in a minute. When I was notified that I was going to receive the honored alumni award for the law school this year, I was informed that part of the prize package included giving a 50 minute lecture on the topic of my choice. To be honest, I was surprised and pleased to find out I would have so much freedom in deciding what to say. Due to my reputation at home, I usually get a little more direction. I have a habit of saying things that make people feel uncomfortable. When talking with some friends, I told them about BYU asking me to give a lecture on the topic of my choice. As if with one voice, they said, “ Well that wasn’t very smart. Did they talk to anyone before they asked you to do that?” I said, “evidently not.” However, for a while yesterday, I started thinking that maybe someone had.

I came to the law school early yesterday morning to put the finishes touches on my remarks. I was surprised to see that I was almost the only person in the library. I walked around the building, and it was lonely. No classes. No faculty. No students. At around 10:00 o’clock some students started wandering into the building. I thought, “Man, law school is a lot less intense than it used to be.” During one of my walks around the law school, I also discovered that many of the flyers posted to advertise this lecture had the wrong room number. In trying to get that straightened out, I learned for the first time that this is recruiting trip week at the law school,

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<sup>1</sup> The lecture I delivered was not the lecture I came to BYU thinking I would give. For reasons explained in the lecture, I made substantial revisions to my original text during the hours leading up to the lecture. I have done my best to reconstruct what I actually said. In doing so, I have had to rely on notes and memory, since parts of the lecture were delivered “off the cuff.” Therefore, I am pretty sure that things I might not have said, but intended to, have snuck into this transcript. Likewise, there may be things that I said during the lecture that have snuck out of this transcript.

and that the law school is not actually in session. To be honest, by next thought was, "That's how to make an alumnus feel honored. Ask him to spend hours preparing a lecture, and then have him deliver it when school is not in session, after putting the wrong room number on about half of the flyers to confuse anyone who still might try to attend. And who shuts down during homecoming week?"

It took a long walk, but I got over it. Mostly. (The feelings came back a little this morning, when I discovered that one of the two doors leading into this room was locked.) One of the things that helped bring me back to earth was the Daily Universe. Whenever I come to visit BYU, I always try to find a copy of the Daily Universe, so that I can read the letters from the students in the editorial section. I almost always get a kick out of reading those letters. So sincere. So serious. And often so silly. Yesterday, I caught what was apparently the tail end of a debate over whether men who attended the Priesthood Session of General Conference at the Marriot Center, and left before the closing prayer, are going to hell. I believe that same debate comes up every few years. Some things never change.

When I attended the law school, some good friends and I started the Family Law Society, with the great assistance of Professor Lynn Wardle. One of the fun things we did with the Family Law Society was to co-sponsor an annual family law symposium. I saved the posters we used to advertise the symposia, and have brought them here today. We put them up all over campus. I know you all can't see what's printed on the posters, but in the little boxes there are words like abortion, right to life, pro-choice, teen pregnancy, in-vitro fertilization, artificial insemination, test tube babies, lions, tigers and bears. Oh my! You can probably imagine what a stir our little posters caused in the early 1980's. We expected some negative reaction. I think we enjoyed anticipating the negative reaction, and there were many "shocked and appalled" letters to the editor in the Daily Universe. As I recall, one of them said something like, "We knew this would happen when they put in the law school."

Anyway, getting back to the point, thanks to that long walk around campus, and the Daily Universe, I got over my feelings of disappointment, and made some major revisions to my lecture to make it more appropriate for the audience I thought I would have this morning. I'm glad I did. The Dean, and other law school administrators are here. My favorite law professor is

here. Three of my daughters are here; one a BYU graduate, and two current students. One of my very favorite cousins is here. And all of you are here, even though you don't need to be. I'll ignore the fact that the law school has provided a very nice lunch for those attending this lecture, and that all of you may be here just for the food. This is a group that I am pleased to be able to address. Thank you for coming.

The announced title for my lecture today is "The Indispensable Lawyer." I would like to amend that title a little by adding, "and the Indispensable Law School."

To start with, let's define the word indispensable. It is not what most people think. In preparing for this lecture, I asked several people what they thought the word indispensable meant. Most said something like irreplaceable. Given some of the so-called inspirational stories and poems about the word, I think that is probably the most commonly accepting meaning.

I will read you one poem that expresses that view. I received it in one of those usually annoying mass e-mailings, and it started me thinking about this topic. It is entitled "There Is No Indispensable Man" by Saxon Kessinger.

Sometime when you're feeling important;  
Sometime when your ego's in bloom  
Sometime when you take it for granted  
You're the best qualified in the room,

Sometime when you feel that your going  
Would leave an unfillable hole,  
Just follow these simple instructions  
And see how they humble your soul;

Take a bucket and fill it with water,  
Put your hand in it up to the wrist,  
Pull it out and the hole that's remaining  
Is a measure of how you'll be missed.

The moral of this quaint example  
Is do just the best that you can,  
Be proud of yourself but remember  
There's no indispensable man.

Before going on, I need to share with you that in practicing out loud for this lecture, the style and meter of that poem reminded me of another important poem.

The wonderful things about Tiggers  
Is Tiggers are wonderful things.  
Their tops are mad out of rubber.  
Their bottoms are made out of springs.

Sorry. That poem is wrong on so many levels. I am compelled to say that it left me feeling shocked and appalled. There are most definitely indispensable people in this world. There are indispensable people in this room. There is an indispensable person sitting in your chair right now. Don't look around. It's you.

So what is the definition of indispensable. It is not "irreplaceable." Indispensable is defined in most dictionaries with words like essential or necessary. My favorite is the definition found in the American Heritage Dictionary of the English Language. It lists some of the words used to define indispensable, and then states: "The central meaning shared by these adjectives is pressingly needed." What a great phrase. Pressingly needed. It's almost poetic. I can't think of a better term for what excellent lawyers are today. Pressingly needed.

Excellent lawyers are pressingly needed, because the legal profession as a whole isn't doing all that well today. For example, a 1977 Harris poll found that 36% of the public viewed lawyers as "very prestigious." By 1997, that percentage had declined to 19%. I wonder what that number is now. A 2004 Gallup survey rated lawyers only slightly above car salesmen in terms of the public's perception of honesty and integrity. Car salesmen came in last.

Unfortunately, the legal profession doesn't seem to be very happy with itself either. As Dean Kevin Worthen stated in a speech at Pepperdine University last year: "At an individual level, a growing body of literature reveals an increasing dissatisfaction with the practice of law.

A 1990 survey by the ABA Young Lawyers Division revealed that 19 percent of attorneys were generally dissatisfied with their jobs, a 27 percent increase from a similar survey performed just six years earlier. [I would note that recent data shows that these numbers are worse.] A survey of lawyers in Wisconsin nine years later indicated that 91 percent found the practice of law increasingly stressful every year. Yet another study concluded that lawyers experience depression at a rate that is anywhere from two to six times greater than the general population. [This is also true for rates of alcoholism and substance abuse.] As one scholar noted, these surveys demonstrate ‘a clear . . . decline in lawyers’ career satisfaction, physical health and mental health,’ a trend that an ABA committee noted, ‘threatens the well-being of lawyers and law firms in every part of the country.’ ”

Unfortunately, for many lawyers, the practice of law has become as exciting and joyful as screwing in bolts on an assembly line. To borrow a phrase, many lawyers live lives of quiet desperation.

So what do we do? Shall we all go out and jump off the nearest cliff? I was going to say get drunk and jump off the nearest cliff, but that probably wouldn’t be appropriate at BYU.

Fortunately, we don’t have to go around with our hands in buckets of water waiting to pass the bucket along to the next person and be forgotten. We can get off the assembly line. There are opportunities open to us almost every day to be indispensable; some in big ways and some in small. Whether or not we take advantage of those opportunities will make all the difference.

I don’t want you thinking that I’m just making this stuff up, so I’ll tell you about a couple of cases I was involved in. When I was about four years out of law school, working as an associate with a small firm, I was visited in my office by a woman who had just finished a stay at the North Las Vegas jail, and had come out with some pronounced skin problems. She wanted to sue the city, or the jail, or someone, for the conditions in the jail that she felt had caused her problems. She had already been to a few attorneys, and no one was interested in her case.

In talking to the woman, it became pretty clear that she didn’t have much of a case personally. Unfortunately, there were several other things that could have caused her problems, some more likely than the jail. However, it was also obvious that the jail wasn’t a very nice

place, and that the conditions there probably wouldn't pass any kind of judicial scrutiny.

The jail had been built sometime in the 1940s. At that time, it consisted of about nine cells, with one row of bunks along the walls of the cells. Not too bad. As the city grew, and the jail population increased, they added a second row of bunks along the walls, and then a third. By the time I got involved, there were mattresses covering the floor, and people were forced to spend almost the whole day lying down in their beds, because there was no place to walk, and no real exercise facilities. There were lots of other problems as well.

It was pretty clear that what was needed was a federal class action against the jail, but being just a few years out of law school, having never done anything remotely like a federal civil rights class action, and getting no interest from the more senior attorneys in my firm, I wasn't feeling qualified to take the case on myself. I tried shopping it around to other attorneys, and no one was interested, so I decided that I needed to give it a try.

I got the pleadings from an old federal class action involving a different jail, and plagiarized all that I could for the complaint. I named the mayor, city council members, and the chief of police individually. (That becomes important later.) I remembered some of what Professor Floyd had taught about capable of repetition yet evading review, and got past a motion to dismiss, and then I found the ACLU (oooooh) prison project. They offered a lot of assistance, and after that it wasn't that tough. The jail met none of the accepted national standards, and it wasn't too long before we had a consent decree, and it wasn't too long after that that North Las Vegas built a new jail; a jail that now houses most of the prisoners that I see every day.

Sometime later, my family and I moved to North Las Vegas, and when we went to church for the first time, there on the stand was our regional representative, North Las Vegas Mayor Jim Seastrand. Sitting off to the left was our stake patriarch, and soon to be my children's Sunday School teacher, North Las Vegas City Councilman Brent Hardy. Sitting off to the right, was my new High Priest Group Leader, and North Las Vegas Chief of Police Jerry Zohner. After sacrament meeting, they were all talking together, so I went up to introduce myself. I said something like, "Hi. I'm Steve Dahl. I'm the one who...." At that point Brent broke in and said, "Oh, we know who you are." Then everyone got very friendly. It turns out the city leaders had been trying to do something about the jail for years, but could never get voter support. The

federal lawsuit, which forced the city to take corrective action, was almost like an answer to a prayer. Hmmmm.

The second case comes from when I was with the public defender's office doing death penalty work. The chief justice of the Nevada Supreme Court decided that death penalty appeals weren't been handled expeditiously enough. He formed a committee that was called the Rule 250 Committee. I was asked to serve on that committee, and I thought it did a pretty good job. Unfortunately, it apparently wasn't what the chief justice was looking for, because when Rule 250 came out from the Supreme Court, it was nothing like what the committee had recommended. It set standards for death penalty cases that were much more time restrictive and severe than regular criminal cases, and, in my opinion placed an unfair burden on defendants in death penalty cases and their attorneys. The question then became, what do you do about it?

With the support of no one, at least until I found another crazy attorney up in Northern Nevada to be co-counsel, I decided that the best way to protect the interests of my clients was to file a federal class action against the Nevada Supreme Court. Actually, it's not fair to say I didn't have any support. I had lots of support. It was like in those old comedies where the group is hiding in the woods, and is trying to get one of its less clever members to go into the clearing and attract the bear in the other direction. "Let's get Mikie to do it. He'll do anything"

I already had my last federal class action to plagiarize, so I put together the complaint, and headed off to federal court. I still remember standing in the federal court clerk's office, copies of the complaint in hand, and thinking, "this may not be the smartest thing you've ever done." Besides trial work, a good portion of what I did at that time was to prepare and argue appeals to the Nevada Supreme Court. Now, about 7 1/2 years out of law school, it looked like I was going to have to move to Maine and try to start over.

We obtained a preliminary injunction against the Supreme Court enforcing the rule. I can't begin to tell you how good that felt. Fortunately, that is when cooler heads on the court prevailed. They agreed to go back to the rule as originally proposed by the committee, and the lawsuit settled fairly quickly after that. To its credit, once the dust settled, I never felt that the court, or any member of the court, reacted adversely towards me or treated any of my clients any differently than they normally would. That wasn't very good, but it wasn't worse. One side

benefit I discovered from all that was that once you have actually sued the State Supreme Court, no one tries to call your bluff.

I would now like to discuss two specific areas where we as individuals, and as lawyers, and the law school are pressingly needed. I want to start by going back to last year's October General Conference. In the Saturday afternoon session, Elder Joseph Wirthlin delivered an extraordinary address entitled "The Great Commandment." It was about charity. I'm afraid that some may have missed the impact of his talk, because for most it, he was being steadied on his feet by Elder Nelson. I don't know that I have ever seen such determination to deliver a message.

Elder Wirthlin made many inspired statements that day that can guide us as individuals, and as lawyers. I will quote a few.

Nothing you do makes much of a difference if you do not have charity.

[Jesus taught], "Thou shalt love the Lord thy God with all heart, and with all thy soul, and with all thy mind.

"This is the first and great commandment.

"And the second is like unto it. Thou shalt love thy neighbor as thyself.

"On these two commandments hang all the law and the prophets."

Since that day, this inspired pronouncement has been repeated through many generations. Now, for us, the measure of our love is the measure of the greatness of our souls. [Emphasis added.]

In 1840 the Prophet Joseph sent an epistle to the Twelve wherein he taught that "love is one of the chief characteristics of Deity. . . A man filled with the love of God, is not content with blessing his family alone, but ranges through the whole world, anxious

to bless the whole human race.”

Without charity – or the pure love of Christ – whatever else we accomplish matters little. With it, all else becomes vibrant and alive. [Could this be one answer to some of the dreary statistics I discussed earlier?]

At the final day the Savior will not ask about the nature of our callings. He will not inquire about our material possessions or fame. He will ask if we ministered to the sick, gave food and drink to the hungry, visited those in prison, or gave succor to the weak. When we reach out to assist the least of Heavenly Father’s children, we do it unto Him. That is the essence of the gospel of Jesus Christ.

I pray that our hearts may be filled with that love and that we may reach out to our Heavenly Father and to others with new vision and new faith. I testify that as we do so, we will discover a greater richness in life. [Emphasis added.]

We in the legal profession are blessed, because we get double mileage when we use our legal skills to help those less fortunate. We meet our moral and spiritual obligations to assist those most in need, and we meet our professional obligation to provide pro bono work to those who need, but can’t afford, legal services. The need for attorneys to live up to that obligation is greater than ever before.

In a convocation address delivered to this law school last year, Judge Deanell Tacha of the 10<sup>th</sup> Judicial Circuit Court of Appeals recommended that everyone put something in their briefcase, or backpack, that will rattle around and make noise. The purpose for that is to “remind you of and propel you toward the important responsibility of every lawyer: to contribute your time and professional expertise to providing high-quality legal services for those among us who

cannot pay. This responsibility is an important part of what gives us the right to call ourselves professionals. To the extent that we see our work only in terms of billable hours, we have no right to the badge of honor of a professional even though we have paid a handsome price for our law degree. . . . Many among us and on every street and byway in America feel forgotten by the system. They feel powerless. They do not think the law and the legal system apply to them or belong to them. You, all of you, must be part of changing this perception.”

I am happy to report that there are those who are responding to Judge Tacha's call to action. A growing number of law firms across the country are taking a more active approach to pro bono work. Some major law firms now require pro bono work by their attorneys. Law students are also having a positive impact on increasing pro bono work. Quoting from an article from the Wall Street Journal on line: “The movement comes as pro bono work has evolved from an act of noblesse oblige into, at least in part, a business initiative for elite firms. Some firms want strong pro bono programs as a way to recruit and retain top law students and junior lawyers, who are often more eager than their predecessors to do pro bono work.” You law students really can have an impact on how law firms approach pro bono. Seek out firms that encourage pro bono. Let other firms know that's what you're doing. It can make a difference.

Despite the progress being made, many problems remain. I currently serve on the Supreme Court Access to Justice Commission in my state. Recently we commissioned an access to justice assessment to try to get a handle on the legal needs in our state. This newspaper article summarizes some of the results. They pretty much match the results from similar studies throughout the country, and reflect statistics nationally.

- Headline: Nevada fails to provide equal access to justice.
- 2000 families a month losing their homes to foreclosures.
- 11% of state's residents live in poverty.
- 1/3 of families have combined income of less than \$35,000/year.
- More than 80% of civil legal problems faced by Nevada's poor are going unmet.

It goes on and on.

These problems cannot be met by legal services providers which are uniformly

underfunded and understaffed. Frankly, they can't all be met by the available attorneys using traditional means. But much more can be done. We as graduates of this law school, and/or LDS attorneys, and/or just good people should be taking the lead in that.

I can tell you from experience and based on reports from others, that those who get involved in pro bono work feel greater satisfaction with their careers and their lives in general. Many attorneys tell us that when they are doing pro bono work is when they most feel like they are practicing law like they thought they would when they were in law school. One very successful, and very rich attorney recently told us that the greatest achievements of his legal career have come from doing pro bono work.

I have a quote from another attorney. Even though it's from a criminal case, it still applies here. "The client who gave me the greatest personal satisfaction was a young boy whom the Supreme Court appointed me to represent in his appeal to the court. I lost the appeal, and acknowledge 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." That's pretty good. By the way, the attorney is Dallin Oaks.

Doing pro bono work is one area where you can be indispensable in the traditional sense. Lawyers who do pro bono work truly are irreplaceable. It's not like if you don't do it someone else will. There is such a disparity between the need and those stepping up to help that if you don't do it, it won't be done. The person you would have been helping will receive no help, because there isn't any one else out there to take your place. Those already volunteering are busy with other cases. For the people who would benefit from your help, it's you or no one. Is there a better definition of indispensable?

The second area where we pressingly need lawyers to step up to the front is professionalism. To a certain extent, we are fighting a losing battle, because no matter how much good we try to do in this area, it is outweighed by the flood of stupid lawyer television commercials which often portray us as a bunch of manic, money grubbing clowns. That doesn't mean we give up.

In my opinion, one of the problems we are having as a profession is that we have allowed ourselves to focus more the letter of the law as to what it means to act professionally than on the

spirit of the law. More and more lawyers seem to be forgetting the overall concepts of what it should mean to be a lawyer, and the courtesy, civility, collegiality, and integrity that should go along with that.

In the criminal law, there is something called the Strickland standard. It is the minimum allowable level of performance to avoid ineffective assistance of counsel. No one should go into a criminal trial hoping they can raise the level of their performance up to the Strickland standard. The Strickland standard is an embarrassment. In Texas, they found that an attorney who slept through part of a trial was not ineffective under Strickland, because it wasn't shown that he slept through any of the good parts. Obviously, the Strickland standard is not the goal of any reputable criminal defense attorney. That attorney should strive for something much better.

What many lawyers seem to forget is that the Model Code of Professional Conduct, or whatever rules exist in a particular jurisdiction, are the Strickland standard of ethics. If you fall below that standard, you are subject to sanctions. There is little room for error if you fall below those rules. There is a lot of room above those standards for truly ethical behavior.

President James E. Faust, who was also an outstanding lawyer and member of the legal community stated, "There is a great risk in justifying what we do individually and professionally on the basis of what is 'legal' rather than what is 'right.' In so doing, we put our very souls at risk. The philosophy that what is legal is also right will rob us of what is highest and best in our nature. What conduct is actually legal is, in many instances, way below the standards of a civilized society and light years below the teaching of Christ. If you accept what is 'legal' as your standard of personal or professional conduct, you will rob yourself of that which is truly noble in your personal dignity and worth. You can be as tough as want as an advocate, but you must never lower your own integrity."

Any questions?

I can give you an easy to remember, but not so easy to achieve code of professional conduct in 20 words or less. I will need some help. Would all the women in the room who came up through the LDS church's young women's program, please raise your hands. Thank you. You did that even though you knew it was probably a mistake. Now please stand up. Come on. You're not too cool for this. Now, please repeat with me the Young Women's Theme: "We are

daughters of our Heavenly Father who loves us, and we love him. We will stand as witnesses of God at all times, and in all things, and in all places.” Stop. Please repeat that last sentence. “We will stand as witnesses of God at all times, and in all things, and in all places.” Thank you. You can sit down. There it is. You will note, that it doesn’t say that we will stand as witnesses of God, unless we become lawyers, or except when we are practicing law. One way or another, we are witnesses for God, our religion, and our own personal integrity in everything we do, including how we practice law.

That brings me to asking what law schools, and particularly this law school can do in these areas. In broad terms, I am going to suggest that along with teaching students how to think like lawyers, law schools need to spend more time teaching their students what it means to be a lawyer, in every sense of the word, and in preparing them for the realities of the practice of law, and their obligations as members of an honored profession. That should not be left to the vagaries of whoever happens to hire a graduating law student first.

Elder Bruce Hafen spoke of this to the entering law school class in 1973: “You will not learn merely from reading cases that special combination of skill, insight, and selflessness that work together to create a truly professional counselor at law. But I daresay that if you do not make this discovery, really as a bi-product of what we do in the classroom, you will leave this campus three years hence not much more than a relatively sophisticated money grubber and may always wonder why all that lofty language about being a professional seems so full of emptiness.”

The only thing I would add is that 35 years after Elder Hafen’s remarks, and given the problems that beset the legal profession and individual attorneys today, and the growing need for pro bono and other types of legal services to the poor, we can no longer leave the development of that “special combination of skill, insight and selflessness that work together to create a truly professional counselor of law” to be a bi-product of what is taught in the classroom. More is needed.

To get more specific, I am going to wander into perhaps treacherous territory. I am now going to discuss two words that have not been very popular at this law school: legal clinics. My personal history with the J. Reuben Clark Law School and legal clinics was not smooth, and,

obviously, it has stayed with me for a long time, as it has become the topic of my choice. When I applied to the law school, it was still in its fairly early days, and people with good grades, and who scored in the 98<sup>th</sup> percentile on their LSAT, received recruiting phone calls from the law school administration. I don't remember who called me, but I do remember that I asked about legal clinics at the law school. I was told that there weren't any presently, but that it was something they were looking at. It turned out that they were looking at it like someone looks at something they find after it's been lost at the back of the refrigerator for 6 months. Ewwww. I made periodic inquiries about legal clinics during my time here, and was always told that they weren't going to happen, although I'm pretty sure someone told me that we'd have legal clinics at this law school just as soon as the church announced a temple in Rome. O.K., that's not true, but maybe it should be. Finally, in my third year, some friends and I started the Guardian ad Litem Project which, I guess, is as close to a legal clinic as we've had at the law school. Professor Backman told me that it still survives, but now it is an externship program.

There are several reasons I think the law school, its students, and the legal community could benefit from clinical programs at BYU at this time. **First, clinical programs are now part of the curriculum at most of this nation's leading law schools.** I can't say all, because there are none here, and according to the BYU information brochure I received recently, this law school is currently ranked 46<sup>th</sup> in the country. Not bad. **How can it get better? What is holding this law school back?**

I have brought with me a chart, prepared by my friends at UNLV law school, which has on it the 20 top ranked law schools in the country: Yale, Harvard, Virginia, UCLA. (Not with that football team.) Under each of those schools is listed the clinical programs available at those schools. There is a broad range, but many, if not most, involve providing legal services to the poor. **I would suggest to you that, in today's world, a law school is not going to get on this chart of top 20 law schools if it doesn't have anything to list under clinical programs.** I don't know how far down the list of top law schools you would have to go to find a law school without a clinical program. 46th?

When I was attending the law school, and making my periodic inquiries about clinical programs, it was explained to me that one of the reasons this law school didn't have clinical

programs was that the most successful and serious law schools, the schools who got to eat at the big people's table, did not favor clinical programs. I believe that was true at the time, but look at what the big people are doing now.

One of the reasons clinical programs are becoming more accepted, is because attitudes about teaching and learning generally, and in law school, are changing. Ideas about the proper roll of law schools are also changing. Somewhat ironically, I received my undergraduate university magazine while I was preparing this lecture. In it, is this page: "New Clinic Expands Legal Education, Assists Public." The accompanying article states that the Brandeis School of Law at the University of Louisville is preparing to change the way it teaches, while, at the same time, helping underserved people in the community. The Dean of the law school is quoted as saying, "There simply is no better way to learn the law than handling real cases and representing real clients."

Together with that, I want to refer to the remarks of BYU-Idaho President Kim Clark at this year's Founder's Day dinner. He talked about the many different ways that effective learning can take place, and that it isn't always teacher to student in a classroom setting. Among the other possibilities is learning as a group or team. I think that is particularly applicable in the area of learning to provide legal assistance to the poor.

Before I go further, let me state my premise for this proposal. I believe that of all the law schools everywhere, this law school should be the very best at instilling in students the desire to provide legal services to the less fortunate, and training them in how to do that. Just as this law school has become a leader in the areas of religious freedom and family law, it should become a leader in the theory and practice of providing legal services to the poor. If not J. Reuben Clark Law School, then who should it be?

Obviously, not every student has to become a legal services attorney or a public defender. No students have to do that, but they should leave this law school with a high degree of desire and training to do something to benefit the poor and weak among us after law school. Given the law school's stated mission, the sponsoring institution, and the principles we espouse, I don't see how the legal profession's response to Elder Wirthlin's address, and his call to reach out to the poor and needy with "new vision and new faith," and similar messages in almost every issue of

the Clark Memorandum, can be left to another law school.

In preparation for this lecture, I started an informal survey, and asked LDS lawyers, both BYU and non-BYU graduates the following question: **Assuming some bright young college student decided he wanted to take Elder Wirthlen's message to heart, and wanted to be trained in how to use the law to benefit the sick, the hungry, and the weak, would the law school at BYU be your first recommendation?** I won't reveal the results here, although they weren't very favorable for the law school, because my favorite response came from someone who declined to answer the question, and said, "You don't need to take a survey. That's just a good question."

I don't know if the J. Reuben Clark Law School wants to be that law school, but if it does, I don't think it can be accomplished without clinical programs. There are some things that are best learned in a group or team setting. That includes things like dealing with real life legal situations, where members of the team can help and encourage others when things get a little difficult, and where the goal isn't necessarily worrying about the best grade, but worrying about providing the best service possible. Team members can learn from each other, teach each other, and support each other. As Elder Uchtdorf said in his recent conference talk, when talking about the Sons of Helaman, "they were be able to accomplish things together, that none of them could have accomplished alone."

My personal experience with this comes from my time as team chief over the death penalty defense team in the Clark County Public Defender's Office. I started out as team chief over myself and whoever I could get assigned to sit second chair on a particular case. Gradually, the team grew, and by time I left, we were seven attorneys and support staff. The difference between the attitude and effectiveness of the team when it began, as compared to the team I left, was huge. With a real team in place, we were able to deal more effectively with the most difficult kinds of cases, and, dropping all pretense at modesty, over the last few years, we were credited with helping to change the face of death penalty defense in Nevada. We couldn't have done that working alone or separately. It only happened as a team, and it is as a team that students, or lawyers, can best learn to provide legal services to the less fortunate.

Those are often not easy cases either. As described by Professor Constance Lundberg, "It is so easy to be moral in the abstract; so much harder in the dirty, raging, hate-filled reality that

is muttering and swearing a blue streak in your office.” Learning to properly deal with those real life situations is best started in law school, and supported by a clinical setting. Otherwise, it would be like trying to teach someone how to think like a baseball player. No matter how many classroom sessions you might have, it will all fall apart the first time the student steps up to the plate and sees that first curve ball that looks like it’s heading right for his head. The arms flail, and the batter bails out of the batter’s box, as the pitch drops in for a strike. Now, not only did the batter look silly, the batter is also not very anxious to get back in the box. That kind of problem can only be solved with practice and some experience, just like dealing with difficult clients with real needs.

Clinical programs and training in law school will also help to remove many of the excuses lawyers use to not do pro bono work, especially, “I don’t know how.” That, by the way, is almost always a cop out. An attorney will tell prospective clients that he can put together a multi-corporation merger, involving international, federal, state, local and ecclesiastical law, from 17 jurisdictions, involving 5 foreign languages, while sending text messages and playing games on the computer, but if you ask that same attorney to help someone with a child custody matter, he will jump up on his chair and scream like one of the kindergarten children when the class snake gets loose. They say they don’t know how, but if the same case were to walk through the door with enough money, knowledge would suddenly flow down from heaven, and as if by magic, they will know how. **Pro bono work is a matter of desire and commitment, and that desire and commitment need to start in law school.**

I understand that when this school was getting started there were concerns over being viewed as a legitimate law school, and not just some kind of legal branch of the church. As Elder Bruce Hafen said during his speech at last year’s Founder’s Day Dinner, “If the law school couldn’t establish strong credibility right at the beginning, it might have been impossible to claim it later on.”

Some of these same concerns are expressed and reviewed in Dean Worthen’s talk which I referenced earlier. In that talk, Dean Worthen stated, “Regardless of the exact causes of the trend toward secularization, there is little dispute as to its reality, and that reality poses a challenge for those who believe there is a role for religiously affiliated law schools. As Rex Lee noted in

1985, the ‘historical pattern of religious schools has been to achieve either professional excellence as secular institutions, or fidelity to their religious values as so-so law schools.’ Some remain convinced that this pattern is inevitable. Mark Tushnet has argued that a religiously affiliated university ‘will find it extremely difficult to maintain this affiliation if it also seeks to attain or preserve a national reputation.’ For many, then, the choice is clear: a law school can be secular or second rate.”

I believe that to a certain extent, this law school has already proven that conventional wisdom was wrong. It is certainly not secular, and it is definitely not second rate, and I believe it could now have clinical programs without any problems with how that is viewed by the outside world. In fact, if anything, the view of the outside world has changed. When I was gathering information in preparation for this lecture, and told people that BYU law school has no clinical programs, the most common response was something like, “I’m surprised. I would have thought that a good law school like that would be more involved in that area.”

It seems that we have experienced a kind of strange full circle. Early on, it seems that the law school was concerned about being perceived as living down to people’s expectations: “Those silly Mormons. They start a law school and spend all that time on legal clinics and helping the poor. They must not be very serious about having a really good law school.” Now, we may not be living up to legitimate expectations: “What’s wrong with those Mormons. They have a really good law school, but they don’t want to get their fingernails dirty by doing hands on work with the poor.”

What may have been true in the past does not need to be true today. Things change. One need only to look at the church’s missionary program to see that. If the way things started was always the right way, we’d still be giving missionaries a sack of Books of Mormon and a pat on the back, like Samuel Smith. Instead, we’ve gone from that to everyone coming to the mission home, then being sent to their country of assignment, and having to learn foreign languages after arriving in that country; to everyone going to the mission home for a week, and having English speaking missionaries go from there, while foreign speaking missionaries went to various Language Training Missions; to having everyone go to one centralized Mission Training Center for however long was necessary; to having everyone start at a central MTC, and then having

many missionaries continue on to various regional MTCs. Many changes, all meant to improve the way the message of the gospel is delivered to people throughout the world. Is it possible that there might be different ways to effectively teach and train in law school as well?

It seems to have been anticipated that this law school would grow and develop over time. Going back to Elder Hafen's talk at last year's Founder's Day dinner. He talked about the founding of the law school, and how that came about. He said that many advised against creating a law school at BYU, but, "in spite of that candid advise, the Brethren decided to create the Law School anyway. They had felt a clear spiritual nudge, and they knew from experience that the reasons for that nudge would eventually become more clear. The process of acting on an inspired premise and then discovering a supporting rationale by hindsight is not unusual. That is what happened with the Law School's founding, and it happens in other ways when we walk by faith."

In his remarks at the opening of the law school, then BYU President Dallin Oaks stated, "The special mission of this law school and its graduates will unfold in time."

I am not suggesting that the law school radically depart from what it is doing now. I am only suggesting that it broaden its special mission by adding programs and training that will more fully help it to meet its mission to train people to use the law to minister to the sick, help the less fortunate, and give succor to the weak. I believe that this is imperative to the law school fulfilling its full purpose and mission. If we can imagine that the law school has a spirit, which I guess would be made up with a little bit from all of us, and the spirit of the law school went to be judged, do you think that the questions the Savior would ask would be much different for the law school than he would ask us individually?

I have one final quote on all this. It comes from someone named James Gordon III. It's found in the Fall 1997 issue of the Clark Memorandum, in an article entitled "A Song to Sing: The Importance of Religiously Affiliated Law Schools." Dean Gordon is probably sitting over there wishing I'd leave him out of all of this, but this is what he said. "Good lawyers must have the skills required for professional competence. But that 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. 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. People go to them to be healed, to be made whole, and to be protected from harm. There 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 skills, but also compassion, righteousness, mercy, and strength to suffer and carry pain. That is what it takes to be a truly good lawyer. The world desperately needs [and if I might say pressingly needs] truly good lawyers - and truly good law schools to teach them.” Thank you, Dean Gordon.

To conclude, earlier in this talk, if any of you can remember back that far, I read a bad poem. It’s only fair that I leave you with a much better poem. It’s called “Voices of the Night: A Psalm of Life,” by Henry Wadsworth Longfellow. He called it “a voice from my inmost heart.”

Tell me not, in mournful numbers,  
Life is but an empty dream! –  
For the soul is dead that slumbers,  
And things are not what they seem.

Life is real! Life is earnest!  
And the grave is not the goal;  
Dust thou art, to dust returnest,  
Was not spoken of the soul.

Not enjoyment, and not sorrow,  
Is our destined end or way;  
But to act, that each to-morrow  
Find us farther than to-day.

In the world’s broad field of battle,  
In the bivouac of Life,  
Be not like dumb, driven cattle!

Be a hero in the strife!

Trust no Future, howe'er unpleasant!

Let the dead Past bury its dead!

Act, – act in the living Present!

Heart within, and God o'erhead!

Lives of great men all remind us

We can make out lives sublime.

And, departing, leave behind us

Footprints on the sands of time;

Footprints, that perhaps another,

Sailing o'er life's solemn main,

A forlorn and shipwrecked brother,

Seeing, shall take heart again.

Let us, then, be up and doing,

With a heart for any fate;

Still achieving, still pursuing,

Learn to labor and to wait

May each of us, and this law school, leave large footprints on the sands of time. And remember, the best footprints in the sand are made when barefoot.

Thank you for your time and attention.