

# THE EARLY CHURCH AND THE LEGAL PROFESSION<sup>1</sup>

Professor James H. Backman

## Scripture References:

- Alma 10:13-18
- Alma 14:18-28
- Luke 11:46

## Selected Reading Material:

Thomas Alexander, *Utah, The Right Place*, Gibbs Smith Publisher, Salt Lake City, 1995.

Ken Driggs “Lawyers of Their Own to Defend Them’: The Legal Career of Franklin Snyder Richards,” *Journal of Mormon History* (Fall 1995).

Edwin Brown Firmage & Richard Collin Mangrum, *Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830-1900*, University of Illinois Press, Chicago, 2001.

Gordon B. Hinckley, *James Henry Moyle – The Story of a Distinguished American and an Honored Churchman*, Deseret Book, Salt Lake City, 1951.

“Address Delivered by President Franklin S. Richards to the High Priest Quorum of Ensign Stake,” 13 November 1932, Historical Department Archives of the Church of Jesus Christ of Latter-day Saints, Salt Lake City.

Gene A. Sessions, *Mormon Democrat: The Religious and Political Memoirs of James Henry Moyle*, Salt Lake City, 1975.

## **Notes and Commentary:**

### Introduction

Attorneys play a very different role in the Church today than they did at the Church’s inception.

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While a small handful of converts practiced law in the early days of the Church, members generally frowned upon the legal profession. This undoubtedly stemmed from the vast number of groundless lawsuits that burdened the prophet Joseph Smith and the early membership at large.<sup>2</sup> Indeed, much of the initial persecution plaguing the Saints was perpetrated under the guise of the law. During those initial years, Brigham Young was not alone in his sentiment when he exclaimed that “the grass never grew on the spot where a lawyer spat.”<sup>3</sup> Moving forward to today, it is indeed remarkable to see an ever-growing force of LDS attorneys across the earth, building up the Church in diverse places.

The history of LDS attorneys is a fascinating topic which can be divided into four distinct periods.<sup>4</sup> This chapter will focus on the first two periods, from 1830 to the turn of the century. The next chapter will discuss the last two periods. First, it spotlights the lives, careers and Church service of several legally trained Church leaders. Then, it turns to the creation of the J. Reuben Clark Law School and concludes with a short discussion of the law at Church Headquarters.

## **Section A: Early Attitudes Toward Law and the Pioneer Years in Utah Territory**

The first period spans the years 1830-1880, from the founding of the Church up to and including the exodus to the Great Basin, and ending soon after the death of Brigham Young. This period was replete with instances where anti-Mormons used the law as a tool to persecute the Saints.

### **Anti-Mormons Persecuted the Church through Litigation**

- Constitutions and laws do little good if they aren’t enforced. Can you think of instances in other countries where enforcement of laws is still a prominent

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<sup>2</sup> Book of Mormon and Biblical criticism toward mispractice of the law likely buttressed the negative stigma against the legal profession that existed during the early days of the Church. See, for instance, Alma 10:13-18.

<sup>3</sup> James H. Backman, *History of Mormon Lawyers, I, 1*, unpublished, prepared for a 1978 lecture series class at the J. Reuben Clark Law School.

<sup>4</sup> For a more comprehensive treatment of these four periods, see id for a more comprehensive treatment of these four periods.

- problem, and what are some repercussions?
- Why did Brigham Young so harshly criticize attorneys? [See also Additional Reading Selections at the end of this chapter.]

In England and early America, the practice of law was a profession that was reserved for the educated elite. The Jacksonian era of the 1830s, which ushered in the ideal of democratizing America, saw a proliferation of untrained attorneys willing to learn the profession on the go. Success as a frontier attorney could be largely attributed to skills in rhetoric and persuasion. Along with more reputable attorneys of this period like Abraham Lincoln, there were others whose litigation-hungry approach combined to make this a low point in the legal profession. Some attorneys went West seeking opportunities to litigate away from the big Eastern cities. These frontier lawyers, endowed with argumentative zeal but without formal education, were the type of attorneys confronting the early Church.

Anti-Mormons bombarded Church leaders with a seemingly unending stream of vexatious and unfounded lawsuits. They also twisted the law in order to rally together anti-Mormon mobs. Unsympathetic lawyers and judges fueled this antagonism and contributed to the problem. For Church members during these early years, as a result of unhappy exposure to the legal process, attitudes toward the law were negative indeed. Brigham Young frequently spoke out against the legal profession to which he and the Church were exposed. On one occasion, he remarked:

“To observe such conduct as many lawyers are guilty of, stirring up strife among peaceable men, is an outrage upon the feelings of every honest, law abiding man. To sit among them is like sitting in the depths of hell, for they are as corrupt as the bowels of hell, and their hearts are as black as the ace of spades. . . . They love sin, and roll it under their tongues as a sweet morsel, and will creep around like wolves in sheep’s clothing, and fill their pockets with the fair earnings of their neighbors...”<sup>5</sup>

Generally, it was about these untrained and often anti-Mormon attorneys that Brigham Young hyperbolized when he spoke out against the legal profession.

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<sup>5</sup> Address by Brigham Young, JD 3:240, February 1856

The Constitution did little to prevent persecution against the Latter-day Saints. Although the Constitution appeared to guarantee fundamental rights of religion, property and liberty, these inspired principles were not yet common practice in America, especially along the frontiers. Instead, early Saints were driven from place to place by mobs, and even a governor’s extermination order, for simply practicing their religion. Indeed the law, twisted and manipulated by frontier Mormon-haters, was a tool of persecution of the Saints.<sup>6</sup>

## Laws to Protect the Church and to Establish Order in the West

Attitudes toward the law began to change as LDS civic and church leaders proactively drafted laws designed to protect the Saints. The foremost of these was the Nauvoo Charter.<sup>7</sup> When it proved inadequate and persecution raged hotter, the Saints trekked over a thousand miles Westward into the heart of the Rocky Mountains. There, they hoped to establish a secure base where the Church could grow free from persecution.

Once settled in the Great Basin, Church leaders set out to establish the political kingdom of Deseret for the effective government of the Saints. In 1950, the Kingdom of Deseret was replaced by the Territory of Utah when the United States government began to exercise jurisdiction over the newly settled area which the government has obtained as part of the 1848 Gadsden purchase. Educated Church leaders, most of whom had no prior legal training, drafted the territory’s first legal codes.

Optimism and enthusiasm toward law characterized this initial period in the West. Freed from abuses of the legal world of the East, Saints were imbued with a vibrant faith in the law. A Mormon kingdom was being formed and the Church needed loyal and proficient legal practitioners to help regulate its affairs. Zerubbabel Snow, a recently re-activated Church member and the territory’s first federal judge, held law classes in his office as early as 1851. This is the setting where many of the first

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<sup>6</sup> Dallin Oaks and Marvin Hill’s *The Carthage Conspiracy* provides a fascinating treatment of the court proceedings against Joseph and Hyrum Smith leading up to their martyrdom.

<sup>7</sup> Edwin Brown Firmage & Richard Collin Mangrum, *Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830-1900* [hereafter cited as Firmage, *Zion in the Courts*], University of Illinois Press, Chicago, 2001, 83-92.

territorial judges received their initial legal training. Also, self-taught Mormon lawyers began to be admitted to the bar.<sup>8</sup> For the first time in years, the law was working as it should for the Mormons and this was a source of great joy and relief to them. For the most part, during the initial years in the West, the Saints were able to regulate their own affairs without outside interference. This would not last long.

The new territorial government, headed by Governor Brigham Young, appointed Church leaders to be the territory's first probate court judges. Two of the first judges included George A. Smith and Hosea Stout. Territorial probate courts were to have jurisdiction over secular disputes<sup>9</sup> while Church courts were to be limited to spiritual matters.

## Federal Courts

- Why do you think the majority of federal judges were at odds with the Church? Was the polygamy conflict unavoidable? What could have been done differently to prevent or minimize such hostile relations?

With the formation of the Territory of Utah in 1850, Mormons came under federal rule and faced harassment from unsympathetic judges from the East. The honeymoon period of Mormon autonomy quickly ended with the arrival of two non-Mormon federal judges who were later disparagingly known as the "runaway judges." Although the Church had, for a time, enjoyed some legal autonomy, persecution from the outside was reintroduced. For many Church members, these troubles revived former criticism and generated a staunch negative stigma toward the legal profession.

The story of the runaway judges illustrates the plight of the first nonmember federal judges appointed in Utah.<sup>10</sup> Soon after arrival to SLC in

1851, the federal judges were all invited to sit on the stand at a conference of the Church in efforts to honor them in their federal appointments. This kind gesture turned awry when one of the justices, who had been invited to speak, warmly rebuked the congregation, for nearly two hours,<sup>11</sup> for their religious practices. In response, Brigham Young arose and criticized the judge's behavior: he was "either profoundly ignorant, or willfully wicked".<sup>12</sup> Soon thereafter these two judges abandoned the territory, making Judge Snow the territory's sole federal judge for the next two years. The famous poetess, Eliza R. Snow, made merry over the incident through a song she composed for a fourth of July celebration. The chorus of this eight-verse song referred to the runaway judges in a jovial and sarcastic light: "they went – but when they left us, they only of themselves bereft us."<sup>13</sup>

Subsequent federal judges generally fell into two categories: those who were antagonistic towards the Mormons and those who, in frustration, abandoned the territory.

Federal judges who remained in Utah frequently felt it their mission to put down the barbarism of polygamy. Charles Zane and James McKean were probably the most antagonistic and aggressive among them.<sup>14</sup> Utah's federal judges were enraged at probate judges who were expressly in favor of, and often practicing, polygamy. Consequently, they extended their jurisdictional reach and became less willing to accept or acknowledge probate court decisions.<sup>15</sup> They also refused to recognize naturalization papers executed by probate courts.<sup>16</sup> Periodically, they even overturned probate court decisions without ever hearing the merits of the

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Utah," *Utah Historical Quarterly*, vol. 36, 132-42, 135.

<sup>11</sup> Firmage, *Zion in the Courts*, 215.

<sup>12</sup> B. H. Roberts, *A Comprehensive History of The Church of Jesus Christ of Latter-day Saints*, 6 vols. (1930), 3:522-23.

<sup>13</sup> Eliza R. Snow, *Poems: Religious, Historical and Political* (1856), 217-218, located at L. Tom Perry Special Collections, Harold B. Lee Library, BYU, Provo, UT.

<sup>14</sup> See Thomas Glen Alexander, "Federal Authority v. Polygamic Theocracy: James B. McKean and the Mormons," *Dialogue: A Journal of Mormon Thought*, Fall 1966, pp.84-100; Thomas Glen Alexander, "Charles Zane: Apostle of the New era," *Utah Historical Quarterly*, vol. 34, Fall 1966, pp.290-314.

<sup>15</sup> Allen, 135-36

<sup>16</sup> *Id.* at 137.

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<sup>8</sup> Then, admission to the bar was a relatively minor hurdle compared to today's process. It simply involved a perfunctory act where prospective attorneys appeared before a judge and pledged to be honest and uphold the law.

<sup>9</sup> While probate courts technically governed the secular realm, there are instances where Gentiles brought their suits before Church courts. James B. Allen, Master's Thesis, *The Development of County Government in the Territory of Utah, 1850-1896*, 1956, 19-24.

<sup>10</sup> James B. Allen, "The Unusual Jurisdiction of County Probate Courts In The Territory of

cases.<sup>17</sup> Meanwhile, federal judges sought every opportunity to put Church leaders behind bars for polygamous conduct. For instance, during the early 1880s more than 1300 men and a few women who had practiced polygamy were jailed.<sup>18</sup> Anti-polygamy aggression got so bad that John Taylor, the President of the Church, went into hiding, where he ultimately died.<sup>19</sup>

Federal judges who left were perhaps more problematic than those who stayed. For example, the Utah War of 1857 in which the U.S. army was sent to Utah was in part incited by the lies and misrepresentations spread by runaway judges.<sup>20</sup> These judges were also much of the impetus behind Congress's later anti-polygamy legislation, beginning with the Morrill Law of 1862 which led to the landmark 1870s US Supreme Court decision in *Reynolds v. United States*, 98 U.S. 145 (1878), and culminating in Congress' Edmunds-Tucker Act of 1887. The Edmunds-Tucker Act authorized extremely harsh punishment for practicing polygamy, including imprisonment and confiscation of Church property. Intermediate legislation, issued after the *Reynolds* case and before the Edmunds-Tucker Act, denied church members, believing in polygamy, of civil rights such as serving on juries, voting, etc. It was during this grim period that Brigham Young made some of his most biting criticisms of the legal profession. For instance, in a discourse in the early Salt Lake Tabernacle, he remarked, "Lawyers are a stink in the nostrils of God and angels and in the nostrils of every Latter-day Saint in this territory."<sup>21</sup>

Finally, the Church capitulated, reversing its policy on polygamy through the famous 1890 Manifesto. Following the Manifesto, friction between the federal and local Utah court systems subsided and relations were much improved. Utah territory gained favor with the federal government and in 1896 the federal government endorsed the formation of the state of Utah. This marked the end of territorial probate courts and the introduction of a more regimented Utah state court system.

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<sup>17</sup> *Id.* at 136.

<sup>18</sup> Richard S. Van Wagoner, *Mormon Polygamy: A History*, Signature Books, Salt Lake City, 1986, 120.

<sup>19</sup> *Id.* at 193.

<sup>20</sup> This military effort later became known as one of "Buchanan's Blunders." Soon after the war, Buchanan formally apologized for having acted upon false information.

<sup>21</sup> Address by Brigham Young, JD 3:240, February, 1856.

## Forum Shopping

- To what extent is forum shopping still an issue today?
- Why did the Church hear secular cases? What were some advantages of taking a case before a Church court?

Federal judges did not enter an empty judicial arena. Church courts and territorial probate courts had, for years, exercised broad jurisdiction in a wide variety of cases. Consequently, 1850 to 1880 was characterized by forum shopping between probate courts, federal courts and church courts. For much of this period Church members could choose the forum that would most likely lead to the desired relief.

While federal courts were the clear-cut court of appeals for probate court decisions, it was not so clear which of the two had original jurisdiction over certain crimes. For instance, the territory's first legal code stated that probate courts could "exercise original jurisdiction [over] both civil and criminal [matters] ... when not prohibited by legislative enactment."<sup>22</sup> Probate courts also exercised powers like today's county commissions in constructing and regulating roads, water systems, libraries, etc.<sup>23</sup> Indeed, probate court jurisdiction was much broader than the jurisdiction held by a typical modern trial court.

Furthermore, Church courts<sup>24</sup> had, by necessity, ruled on secular matters since the early 1830s. Generally, prominent Church leaders were assigned, without monetary recompense, to provide counsel and discipline to Church members and to adjudicate in member-to-member controversies. Secular disputes were very much a part of Church court jurisdiction and this would continue for decades. Also, in contrast to the litigious attitude that was prevalent across the country, Latter-day Saints were discouraged from suing each other in the civic courts, on fear of falling into disfavor with the Church. Generally, suing in the civic courts was deemed to be un-Christian. Church leaders preached forgiveness and expected members to quietly resolve their own disputes or to seek arbitration within a Church court setting.

Concurrent jurisdiction between federal and probate courts led to hostile interactions which stifled the functionality of the overall court

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<sup>22</sup> Allen, Unusual Jurisdiction of County Probate Courts, 133.

<sup>23</sup> Allen, Master's Thesis, 19-24.

<sup>24</sup> Church courts is a collective term referring to High Council courts, Elders' courts, and Bishop's courts.

system. Ultimately, in 1874, with the federal government's passage of the Poland Act, the role of probate courts was substantially curtailed.<sup>25</sup> Following this Act, each court system had original jurisdiction over its own separate crimes and offenses. Ultimately, in 1896, with the formation of the state of Utah, territorial probate courts were abolished and replaced by the Utah state court system. Also, Church court jurisdiction over secular matters began to fade and was officially done away with towards the end of the 19<sup>th</sup> century. With jurisdiction more clearly defined and the formation of the State of Utah on the horizon, tensions between the two court systems largely became a thing of the past.

## **Section B: Changing Attitudes and Pioneer LDS Attorneys**

- How do you explain Church members' apparent schizophrenia toward the legal profession during this period?

The second period in the history of LDS attorneys, beginning in late 19<sup>th</sup> Century and continuing through the turn of the century, is characterized by a softening attitude toward the legal profession. Despite pervasive negative attitudes in the Church toward lawyers, there was a growing need for skilled LDS attorneys to meet the demands of an expanding and prospering Church. This need was so acute that in an 1873 general conference a softened Brigham Young actually encouraged "one to five thousand of our young and middle-aged men to turn their attention to the study of law."<sup>26</sup>

Brigham Young persuaded a few, even prior to 1873, to become attorneys in order to assist the Church. Franklin S. Richards' legal career is an example of a humble man heeding the prophet's counsel. Inasmuch as Richards was the son of apostle and probate judge, Franklin D. Richards, it may seem natural that he pursued a legal career, but such was not the case. Richards was wholeheartedly devoted to the study of medicine. He did not want to study law. He even had an apprenticeship set up with one of the territory's

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<sup>25</sup> The Poland Act was, in part, spurred on by the claim that Mormons were dominating the court system. In rebuttal to this, George Q Cannon presented a list of eighty-four civil cases between Mormon and non-Mormon tried by jury in Salt Lake County. Of these, only twenty-five were decided in favor of Mormons, while fifty-nine were decided in favor of non-Mormons.

<sup>26</sup> Address by Brigham Young, JD 16:9, April 1873.

few reputable medical practitioners. With prophetic knowledge that the Lord would need Richards to defend the Church in future cases, Brigham Young took Richards aside and persuaded him to forego medicine in order to pursue a legal career where he "could do the most good."<sup>27</sup> Richards later served as the Church's first general counsel for 54 years, and defended the Church in a wide range of cases, at a time when the Church was almost constantly on the judicial hot seat. In his senior years, he implemented an uncommon property concept, corporation sole, which would safeguard Church properties against greedy litigants.

However, animosity toward the legal profession was slow in dying. For instance, as late as 1866, Brigham Young said:

"I will use my influence with every good man, whether he is in the church or out of it, never to think of going into law. What comes of litigation? Poverty and degradation to any community that will encourage it. Will it build cities, open farms, build railroads, erect telegraph lines, improve the country? It will not; but it will bring any community to ruin."<sup>28</sup>

This was a time when the Church needed more and more loyal attorneys; however, the sting of past hurts still lingered and continued to shape common LDS sentiment. Past and present legal frustrations were still very real to Church members. Attitudes would be slow in changing.

## **James Henry Moyle: A Pioneer LDS Attorney**

- How was Moyle a pioneer Mormon attorney? How can you be one?

James Henry Moyle was a pioneer among LDS attorneys. Despite constant dissuasive counsel from his Bishop and other Church leaders, Moyle cleaved to the idea that he could get a legal education and stay true to the Church. After a lengthy conversation with the prophet in the fall of 1882, President John Taylor conceded to set

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<sup>27</sup> "Address Delivered by President Franklin S. Richards to the High Priest Quorum of Ensign Stake," 13 November 1932, Historical Department Archives of the Church of Jesus Christ of Latter-day Saints, Salt Lake City, UT, 3.

<sup>28</sup> Address by Brigham Young, JD 11:260, August, 1866. For other Brigham Young quotes on lawyers and the law, see Ron Heimberger, *Brother Brigham's Lawyers and the Law, Book III, Short Sermons Fitly Spoken* (1996).

Moyle apart in to pursue a legal career. Moyle's ensuing success at law school and continual loyalty to the Church paved the way for many dozens of Church members who sought out a legal education in the East during the next two decades. Indeed, Moyle was a courageous pioneer who opened the doors of the legal profession to many who would follow.<sup>29</sup>

## Moyle's Determination to Attend Law School

- How dangerous to your faith is it to study the law and become an attorney?
- How can you be an attorney without compromising your religious beliefs?

James Henry Moyle was astutely aware of the Church's need for loyal and trained attorneys, and anxiously sought out a legal education. In his memoirs, Moyle explains that part of his interest in law stemmed from Abraham Lincoln's legal and political career. Like Lincoln, Moyle grew up in humble circumstances and had great ambition to serve and to make a valuable contribution to the world. Moyle believed all along that lawyers wielded tremendous power that could be used for good. Said Moyle, "I always wanted to be of service to my people ... I really thought that the law was simply the greatest field that was open to such poor boys as Abraham Lincoln and James Henry Moyle and I did believe ... that if I equipped myself well I could be of real use to my people as well as myself and family."<sup>30</sup>

However, Moyle faced a barrage of opposition from Church leaders. When Moyle expressed to his bishop an initial interest in getting a higher education, the bishop harshly responded, "Jimmy, you're a good boy, but those educated men are damned rascals."<sup>31</sup> Also disheartening were the words of his Stake President, Angus Cannon. After learning that Moyle had been accepted to the University of Michigan law school, President Cannon, in an outburst of protest, slammed his fist on the table and

exclaimed "you'll go to hell!"<sup>32</sup> This was partly in reference to other Mormon boys who had ventured off to get a legal education and subsequently abandoned the Church.<sup>33</sup>

Nevertheless, Moyle resolved to plough forward into a legal career, despite significant opposition from Church members and leaders. This did not mean that he took their counsel lightly. Indeed, on his mission to the Southern States<sup>34</sup> and throughout all his life, Moyle had been taught to hearken to the counsel of his priesthood leaders. Consequently, Moyle desperately sought approval from Church leaders to study law, even if it meant turning to higher and higher Church authorities.

Finally, Moyle approached his stake president's brother, George Q. Cannon, a member of the First Presidency. President Cannon was sympathetic with Moyle's plight and arranged a meeting for him with John Taylor, the president of the Church. After lengthy discussion, President Taylor finally acquiesced and agreed to bless Moyle and set him apart as a law student. President Taylor's sobering words, when blessing Moyle, are as instructive today as they were then:

"As thou has had in thine heart a desire to go forth to study law in order that thou mayest become proficient therein, we say unto thee that this is a dangerous profession, one that leads many people down to destruction; yet if you wilt with clean hands and a pure heart, fearing God and working righteousness, and with a desire to maintain the truth and to defend the rights of the Church and Kingdom of God on earth; if thou wilt abstain from arguing falsely ... if thou wilt dedicate thyself unto God every day and ask for his blessing and guidance, the Lord God will bless thee in this calling; and thou shalt be blessed with wisdom and intelligence, and with the light of revelation, and thou shalt be an instrument in the hands of God to assist, to protect the rights and liberties and immunities of his People. But if thou doest not these things thou wilt go down and wither away."<sup>35</sup>

## Moyle's Law School Experience

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<sup>29</sup> Interestingly, prior to his call as a General Authority, President Gordon B. Hinckley authored *James Henry Moyle – The Story of a Distinguished American and an Honored Churchman*, Deseret Book, Salt Lake City, 1951.

<sup>30</sup> Gene A. Sessions, *Mormon Democrat: The Religious and Political Memoirs of James Henry Moyle* [hereinafter referred to as *Moyle's Memoirs*] (1975), 76.

<sup>31</sup> *Moyle's Memoirs*, 129-150, 130.

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<sup>32</sup> *Id.* Incidentally, Cannon later apologized to Moyle and even requested that Moyle apprentice his son.

<sup>33</sup> *Moyle's Memoirs*, 129.

<sup>34</sup> Hinckley, *James Henry Moyle*, 131.

<sup>35</sup> *Id.* at 131-33.

- Why is it important to stand up in defense of your religion? How can this benefit you?

With the Prophet's reluctant endorsement, Moyle set out to study law at the University of Michigan at Ann Arbor. Moyle describes this adventuresome experience almost poetically: "I entered a new world with the smell of sagebrush still in my nostrils and the solemn resolve that my ambitions could only be realized by a never ending devotion to hard work."<sup>36</sup> He quickly excelled both in his classes and in his extracurricular activities. In fact, Moyle's lifestyle and success stood out so much that they made a profound impression on the law school's dean. Not only did the dean give Moyle permission to finish law school early, he warmly welcomed Mormons to his law school in subsequent years.

Part of Moyle's academic gusto at law school stemmed from his unabashed zeal toward and defense of the Church. "Rather than stop discussing Mormonism," he remarked, "I decided to resist any hazing and prepared for it with carrying heavy hickory canes which I fully determined to use if attacked."<sup>37</sup>

While many admired Moyle's poise to stand up for the Church, his roommate, George Sutherland, found it outright embarrassing. Having lived in several Utah towns during his youth,<sup>38</sup> and having attended Brigham Young Academy in Provo, Sutherland knew something of the lifestyle and beliefs of Mormons. His parents were even Church members; however, soon after baptism, Sutherland's father, a Utah attorney, denounced the Church. Consequently, Sutherland grew up as one of a handful of non-Mormons in Utah. At home, Sutherland's father schooled him in law and in anti-Mormon stories. Hence, it did not sit well with Sutherland when Moyle determinedly spoke up in defense of the Church. In fact, the debates between the two sometimes became so fierce that they almost resulted in fist-fights. Sutherland later served as a U.S. Senator for the State of Utah and, during the Roosevelt era, he was appointed as an Associate Justice on the U.S. Supreme Court.

"As it turned out, [Moyle] never had to use those [hickory] canes" to defend himself from anti-Mormon classmates. "Conversely," he notes, "I made many friends by defending my unpopular people."<sup>39</sup> He also attributed his success as

<sup>36</sup> *Moyle's Memoirs*, p. 135

<sup>37</sup> *Id.* at 140.

<sup>38</sup> These towns included Park City, Springville and Salt Lake City.

<sup>39</sup> *Moyle's Memoirs* at 141.

president on the debate team to the skills he learned as a missionary. For instance, the night before elections for the presidency of the debate team, Moyle's opponents attempted to abase him by attacking his religion. It became Moyle's job to defend polygamy, at the height of anti-polygamy legislation, before a panel of judges. Unabashed, Moyle embraced this challenge and notes that, "I won my points handedly and to the very great discomfort of my antagonists."<sup>40</sup> Impressed by his courage and persuasiveness in defending such an unpopular belief, Moyle's classmates, with a strong majority, elected him president of the debate team.

## Moyle's Legal Career Following Law School

- What can you do to stay spiritually strong while attending law school?

Although in a foreign environment, and challenged by critical peers and the skepticism inherent in academia, James Henry Moyle returned to Utah a stronger and more devoted Latter-day Saint. Well-trained in the law, Moyle's services became a great asset to the Church and to his community.

Back in Utah, Moyle set up a practice with Franklin S. Richards, an untrained attorney who had repeatedly defended the Church before the United States Supreme Court.<sup>41</sup> Like Richards, and for a spell alongside Richards, Moyle spent his days serving and defending the Church. In his later years, Moyle attained high political stature in the Democratic party, serving as assistant secretary to the treasury during the Wilson administration and as Commissioner of Customs during the Roosevelt administration. These appointments undoubtedly served to increase the stature and recognition of the Church. From law school graduation through his career, Moyle used his legal training to bless the Church.

<sup>40</sup> *Id.* at 144

<sup>41</sup> Ken Driggs "'Lawyers of Their Own to Defend Them': The Legal Career of Franklin Snyder Richards," *Journal of Mormon History* (Fall 1995): 92-109. Richards defended the Church before the Supreme Court in the following cases: *Clawson v. United States*, 113 U.S. 143, 5 S.Ct. 393, 28 L.Ed. 957 (1885); *Clawson v. United States*, 114 U.S. 447, 5 S.Ct. 949, 29 L.Ed. 179 (1885); *In re Snow*, 120 U.S. 274, 7 S Ct 556, 30 L Ed 658 (1887)

In the decade following Moyle's return from law school, dozens of young Mormons studied law at the University of Michigan. According to his memoirs, Moyle always sensed he could play a transitional role in the Church's attitude toward the legal profession. The fruits of today witness of this. Moyle showed that Church devotion and a legal career could be compatible, and he paved the way for many to follow.

## Additional Reading Selections

Alma 10:13-18

13 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, and that they might be slain or cast into prison, according to the crime which they could make appear or witness against them.

14 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.

15 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.

16 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.

17 Now they knew not that Amulek could know of their designs. But it came to pass as they began to question him, he perceived their thoughts, and he said unto them: O ye wicked and perverse generation, ye lawyers and hypocrites, for ye are laying the foundations of the devil; for ye are laying traps and snares to catch the holy ones of God.

18 Ye are laying plans to pervert the ways of the righteous, and to bring down the wrath of God upon your heads, even to the utter destruction of this people.

Address by Franklin D. Richards, JD 26:103, January 1885.

"I wish we could have a goodly number of substantial young men growing up in our midst who would become skilled and mighty in the law, and who could go into any of the courts and set forth the true principles of justice and equity in all

cases. We need more of such men. We do not want men to become lawyers, to be infidels and live for nothing but the little money they can make. We want to raise up a core of young men armed with the spirit of the gospel, clothed with the holy Priesthood, who can tell the judges in high places what the law is and what equity is and to plead for the cause of Zion, and help maintain the rights of God's people."

Address by Brigham Young, JD 11:257, August 1866.

Law is made for the maintenance of peace, not for the introduction of litigation and disorder.

Address by Brigham Young, JD 14:85-86, April 1871.

I marvel many times at the oath that is required of a lawyer with regard to his client; it gives him license to make white black, and black white.

Addresses by Brigham Young, JD 11:283-84, August 1866; JD 15:224, October 1872.

It is hard for a man to study law without forsaking the spirit of the gospel. ... If men cannot study and practice law and keep the Spirit of the Lord, they ought to quit it. [Nevertheless] There are many lawyers who are very excellent men.

Address by Brigham Young, JD 15:20-21, April 1872.

Now, brethren and sisters and friends, I have said a few words about lawyers; but I could pick up other classes of men just as bad, and we can find fault with all. Let us be honest, let us be upright, full of charity one toward another, and live as agreeably as we possibly can here on this earth.

Letters of Brigham Young to His Sons, 222, to Alfales Young, Sept 21, 1875.

"No matter whether a man is a lawyer, a doctor, a mechanic, or indeed, be he engaged in any occupation whatever, that through honesty and integrity will always lead to success, influence and respect. . . . There is no doubt but that Benjamin Franklin's motto was a true one, that honesty is the best policy. I wish to impress this truth firmly on your mind and on the mind of our other brethren who are studying law, as no other profession seems more open to this evil than theirs."