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Loyal Opposition
Ernest L. Wilkinson’s Role in Founding the BYU Law School

Galen L. Fletcher

The successful founding of the J. Reuben Clark Law School at Brigham Young University in Provo, Utah, is usually told as the story of three Mormon lawyers: Dallin H. Oaks, Rex E. Lee, and Carl S. Hawkins. All three were former clerks to U.S. Supreme Court justices and possessed national reputations in the American legal profession. Oaks was a University of Chicago law professor when asked to be BYU president and start the Law School in 1971. Lee and Hawkins were the Law School’s first two deans. All three individuals were crucial to the success of the Law School’s beginning and eventual role in facilitating the significant outmigration of LDS lawyers throughout America and the world. They shared the “aspiration that not only would the school be a faithful Mormon institution that competently provided legal education, but that it would also be recognized by the American bench, bar, and academy as outstanding by conventional standards.”

This article is the story of a fourth outmigrant Mormon lawyer, one who spent a year and a half in the early 1970s helping to start and hoping to lead a law school at Brigham Young University. He lost the fight to direct the law school, yet remained loyal to the university, the law school, and BYU’s sponsoring organization, The Church of Jesus Christ of Latter-day Saints. The attorney is Ernest L. Wilkinson, best known for being the president of Brigham Young University for twenty years (1951–1971), but not as well known for his role as catalyst for the existence of the J. Reuben Clark Law School. This article discusses the first mention in Wilkinson’s papers of a law school at BYU, Wilkinson’s work behind the scenes for a year to start it, and his important contributions to the
I’ve been interested in the unique mission and purposes of the BYU Law School for over half of its existence, as a student or an employee. This article grows out of my experience watching how each individual connected to the school contributes to its collective mission and how God uses each of us to create the whole.

On the first day of the BYU Law School in August 1973, the charter class heard three different views on the school’s purpose and mission. First, former BYU President Wilkinson shared his views on the political necessity of studying the constitution. Then, the current BYU President, Dallin H. Oaks, spoke of excellence of mind and character, hard work, and learning the rule of law, before he added, “The special mission of this law school and its graduates will unfold in time.” Finally, Marion G. Romney, as the Second Counselor in the LDS First Presidency, counseled the new students to “obtain a knowledge of the laws of man in light of the laws of God.”

For the past four decades, the BYU Law School has continued to navigate among divergent views of the law through the lens of politics, the lens of work and professional excellence, or the lens of spiritual conviction. Ernest Wilkinson came up with the idea of a Mormon law school, but his “politically flavored model” was quickly set aside by the actual law school founders, who focused on competence and faithfulness. Despite his disappointment, Wilkinson stayed loyal to the Church, university, and law school, even though he did not get to personally build on his great idea. In doing so, he exemplified the famous observation by the namesake for the BYU Law School, J. Reuben Clark Jr., “In the service of the Lord, it is not where you serve but how.”
Law School’s early foundation before Oaks, Lee, and Hawkins entered the picture. This article uses Wilkinson’s diaries and personal papers to tell the story of the J. Reuben Clark Law School founding prior to its March 9, 1971, public announcement, with an emphasis on contributions by Wilkinson which are not generally known or mentioned in most BYU Law School histories.

**Wilkinson before 1970**

Ernest L. Wilkinson’s background uniquely positioned him as a catalyst for the Law School’s start. Known for his industrious work ethic, Wilkinson was born in 1899; grew up in Ogden, Utah; was student body president at Weber Academy in 1917–18; and was on the debate team at Brigham Young University. Later, he migrated east, where he graduated summa cum laude from George Washington Law School and earned an advanced law degree from Harvard Law School in 1927. He then worked full time in a downtown New York City law firm headed by future U.S. Supreme Court Chief Justice Charles Evan Hughes while simultaneously teaching classes five nights a week at the nation’s then-largest law school, the predecessor to Rutgers Law School in Newark, New Jersey.
Wilkinson’s Sundays were also busy as he served as a local LDS Church leader in Manhattan and then Queens, New York. In 1935, he moved his family to Washington, D.C., where he was a law partner, then law firm founder successfully handling Indian law and other cases for many years. He gained experience working with various federal agencies, pushed to create the Indian Claims Commission, and in the late 1940s personally made over a million dollars in a set of cases involving reparations to the Ute Indians by the federal government. His church service continued as he served in the Washington, D.C., stake presidency and used his legal talents pro bono to help the LDS Church in its interactions with government regulations, particularly during World War II.8

From 1951 to 1971, Wilkinson was president of the LDS Church-sponsored Brigham Young University. His BYU presidential years coincided with David O. McKay’s tenure as ninth LDS Church President and Joseph Fielding Smith as President of the Quorum of the Twelve Apostles, both from 1951 to 1970.9 Wilkinson aggressively expanded the BYU campus during his two decades as president, increasing enrollment from 4,000 to 25,000 full-time students and full-time professors from 250 to 930, with an equivalent growth in the buildings on campus, student housing, number of doctorates held by BYU professors, and
the number of colleges and departments at the university. He was very proud that BYU became the largest private university in the country in 1965.\textsuperscript{10}

Ernest L. Wilkinson did not see himself primarily as an academic, although he had taught part time at New Jersey Law School for five years after earning his law degrees from George Washington and Harvard. His focus was on hard work, excellence, and avoiding evil, and he centralized decision making at BYU under his personal control to those ends. Rarely taking a break, even on Sundays, he worked twelve-hour days seven days a week in order to personally handle the major and minor issues of running the quickly growing university. In his interactions with BYU professors, Wilkinson gravitated toward hierarchical relationships rather than collegial ones, although he was very well connected to like-minded LDS professionals across the country.

He resigned his position as BYU president for a short time in 1964 when he barely won the Utah Republican nomination for U.S. Senator in April. Amid the national unrest following U.S. President John F. Kennedy’s assassination in November 1963, the Utah and national Republican political parties became bitterly divided between conservatives (like Wilkinson and presidential candidate Barry Goldwater) and moderates—liberals. Wilkinson and most Republicans lost in the November 1964 general election amid a Democratic landslide, with Lyndon Johnson leading the largest popular vote for president in U.S. history. Wilkinson was soon reinstated as BYU president, but he smarted over various university employees who had publicly opposed his Senate campaign. He then organized a group of students to spy on BYU professors who differed from his own conservative political views, but he waffled on accepting responsibility for the resulting scandal.\textsuperscript{11} Wilkinson continued in office despite some opposition, making certain as late as July 1969 that his support from an aging President McKay continued.\textsuperscript{12} Wilkinson relied on President McKay to buffer his interactions with another senior LDS Church leader, Elder Harold B. Lee, who often strongly differed with Wilkinson on educational philosophies and approaches.\textsuperscript{13}

As BYU president, Wilkinson dealt directly with various interrelated groups of leadership within BYU’s sponsoring institution, The Church of Jesus Christ of Latter-day Saints, headquartered forty-five miles north of BYU in Salt Lake City, Utah. The Church’s senior decision-making body was the First Presidency, which consisted of the President of the Church as well as his counselors and which also made final decisions for all of the LDS Church. The next group was the Board
of Trustees of Brigham Young University, which consisted of senior LDS General Authorities (including members of the Council of Twelve Apostles, the general Relief Society president, the Presiding Bishop, and others). The board of trustees was the legal decision-making organization overseeing BYU operations and, for most of Wilkinson’s time as BYU president, also overlapped with the LDS Church Board of Education, which oversaw BYU and all LDS Church schools, institutes, and seminaries. A final group was the executive committee within the BYU board of trustees, which made recommendations to the full board on most administrative and policy matters involving Brigham Young University. Elder Joseph Fielding Smith was a strong supporter of BYU while he served as chair of this executive committee during the 1950s and 1960s, which post he resigned when he became the LDS Church’s tenth President in January 1970 upon the death of David O. McKay.

The Spark

In May 1969, Ernest L. Wilkinson turned seventy years old. Two months later he had prostate surgery in Arizona, hoping to conceal his condition from people in Utah. He kept up the appearance of good health, worked out daily and even did many push-ups on demand when students would see him at BYU sporting events. He would later say that health was a factor in deciding to resign as BYU president in 1971 and that the change in LDS Church leadership with the passing of President McKay in early 1970 was another reason he considered retirement. The real spark, however, seems to have been the idea of a law school at BYU. As much as Wilkinson enjoyed serving as BYU president, the possibility of creating and leading a Mormon law school was a strong enough incentive for him to begin preparations for a postpresidential career.

Early Sunday morning, January 18, 1970, Wilkinson was home when he was telephoned the news that President McKay had died. He attended McKay’s funeral on Thursday, January 22, and wrote a letter to ninety-three-year-old Joseph Fielding Smith the following Wednesday, January 28, congratulating him on becoming Church President and pledging his continued support as BYU president. A week later, on Wednesday morning, February 4, 1970, the reorganized BYU board of trustees had what Wilkinson called in his diary a “meeting [that] as a whole was harmonious and we made real progress.” That progress included a discussion about an already proposed political science–related Clark Institute at BYU, which led to a crucial conversation.
Ernest L. Wilkinson does forty-seven push-ups at a BYU home basketball game on March 2, 1964, while the BYU mascot, Cosmo the Cougar, counts. Courtesy Perry Special Collections, BYU.

about a law school in the afternoon. In the first favorable mention in Wilkinson's diary of a BYU law school, he credits his friend Gordon Affleck\textsuperscript{22} with the idea:

On the question also of the J. Reuben Clark Institute he [Elder Harold B. Lee] wanted time to talk this over with the Clark family and also with Marion Romney and Gordon Affleck. I am sure they would be in favor of something of this kind, so in the afternoon I talked confidentially to Gordon Affleck. He proposed we ought to have a law school here dedicated to the views of J. Reuben Clark. This pleased me very very much so I told him to see what he could do to get it. This of course is very confidential.\textsuperscript{23}

Wilkinson wrote “very” twice, showing that the possibility of a BYU law school was getting his serious attention. Although there are some passing references earlier in BYU’s history to a potential law school in Provo, Utah, this suggestion by Affleck to Wilkinson sparked a series of behind-the-scenes events leading to the present J. Reuben Clark School of Law.

Affleck and Wilkinson kept this conversation so confidential that no BYU or BYU Law School history mentions it. Instead, one history points to another event two months later as a significant beginning. That event was a dinner organized by Wilkinson and his youngest child, Douglas, a
first-year law student, at the Lion House in Salt Lake City for sixty-five former BYU undergraduates then attending the University of Utah Law School. Wilkinson’s diary mentions the April 16, 1970, dinner as a “very successful affair,” with LDS Apostles and former lawyers Marion G. Romney and Howard W. Hunter also attending. While Wilkinson wrote that “we were all delighted with the party,” Romney’s diary painted a bleaker picture when writing about the three law school representatives asked to talk at the dinner about how BYU prepared them for law school:

To my surprise and disappointment, two of the three were notably critical of their training at BYU. They had not been, so they said, conditioned to think and find the answers for themselves. . . . The so-called protective atmosphere at BYU had, so I understood them to feel, put them at a disadvantage at law school. Not one referred to the distinctive training BYU is maintained to give.

From no one of them did I obtain the slightest indication that they had left BYU morally fortified to deal with the toils of the law.

Reading between the lines, it appears that Wilkinson set up the University of Utah Law School dinner in order to show Romney and Hunter firsthand the impact of a growing anti-Mormon (and antireligious) bias at the state-sponsored law school. Romney was not one to make hasty decisions or be manipulated by others, yet seeing the returned missionaries and future Mormon lawyers from the law school speaking poorly of their LDS Church–funded college education was disappointing to the Apostle. Romney later said one of his motivations for pushing for the BYU Law School was to honor J. Reuben Clark Jr., particularly if those individuals would follow the example of Clark, who “provided a model of the positive impact that the study of law could have on those with deep religious
faith.” For Romney, the Law School’s foundation would be built more on emulating Clark’s religious and legal strengths than Clark’s conservative political views, something Wilkinson and Romney would discuss many times over the next two years.

Law School Preliminaries, Secret Resignation, and LDS Education Commissioner

Wilkinson’s indirect push for a law school at BYU continued after the law student dinner, when, a week later, on April 23, the BYU board of trustee’s executive committee—with Romney as a member—referred the proposed Clark Institute to the full board of trustees without discussion. Nine days later, on Saturday, May 2, 1970, Wilkinson “had a conference early in the morning in Salt Lake with Elder Marion G. Romney with respect to the J. Reuben Clark Institute for Human Dignity and the ‘new school year.’” Four days later, on Wednesday, May 6, the BYU board of trustees discussed the institute but decided to spend “additional time in which to study the proposal.” Whether Wilkinson and Romney first talked about creating a law school at BYU at this time is not recorded. It may have been in the context of the law student dinner, but more likely was at their May 2 conference on the “Institute.” (Despite Wilkinson’s diary saying he and Romney talked about the Clark Institute, it could have been about a Clark Law School, since Wilkinson sometimes purposely obscured details in his diary, which was dictated by him and typed by secretaries.)

A greater question is whether Wilkinson and Romney talked about Wilkinson’s trading his BYU presidential post for a law school one. It also appears that the LDS First Presidency (primarily the two counselors, Harold B. Lee and N. Eldon Tanner) became involved at this point with an unwritten agreement in mid-June 1970 to allow Wilkinson to retire from being BYU president when the law school proposal was far enough along to become a reality. At the same time, they added an additional level of oversight for Wilkinson by giving him a boss, the brand-new LDS Church commissioner of education, Neal A. Maxwell. The strong connection between the BYU Law School’s preliminary approval, Wilkinson’s secret resignation, and Maxwell’s hiring comes from the very close timing of the three events on three days, June 17–19, 1970. Romney’s biographer explains, in part:

In June 1970, in a meeting with Harold B. Lee and N. Eldon Tanner, Brother Romney’s counsel about the organization of the Church
Education System was requested. He recommended Neal Maxwell for commissioner of education and for the first time talked with the First Presidency about a BYU law school in honor of President Clark. Marion reported, “they seemed favorable; at least they did not say no.”

The following day he had a discussion with President Ernest Wilkinson of the university. He told him that he intended to substitute a motion that the law school be established at BYU in honor of President Clark instead of an Institute on Human Dignity that had been proposed previously.34

Assuming Romney’s meeting with Lee and Tanner was Wednesday, June 17, the stage was set the next day, June 18, for Romney to recommend the J. Reuben Clark Law School to the BYU executive committee, and the following day, Friday, June 19, for the First Presidency to accept Wilkinson’s secret resignation letter (effective August 31, 1971, but later changed35) and to publicly appoint Maxwell as Church Education Commissioner (effective August 1, 1970).

At the June 18, 1970, meeting of the executive committee of the BYU board of trustees, Romney recommended that the BYU administration...
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(meaning Wilkinson) study the feasibility of a law school at BYU named for J. Reuben Clark Jr. This motion by Romney was made as a substitute for the political science–related institute which was currently under consideration. The executive committee accepted Romney’s motion and decided to take the matter to the full BYU board of trustees at a later meeting. President Harold B. Lee was aware of Romney’s proposal at this executive committee meeting and, as the member of the First Presidency in charge of education for the LDS Church, gave his support to the measure, helping insure its acceptance.

The entire LDS First Presidency (Joseph Fielding Smith and his counselors Lee and Tanner) were present the next day when Wilkinson gave them his handwritten confidential letter of resignation. Wilkinson knew that his letter would become public to the rest of the BYU board of trustees at some point in the future, so his only stated reason for resigning was the change in the LDS First Presidency. He did ask for an effective date of the end of BYU’s next fiscal year, or August 31, 1971, for three specific reasons: “This will give you ample time to deliberate upon the selection of a new President (2) permit me to consummate certain matters now in process of being completed, and (3) permit the orderly closing of the financial affairs of the University as of the end of that fiscal period . . . financially as well as academically.” It is likely that the Law School planning was one of the “certain matters now in process of being completed.” Since Wilkinson wrote “in long hand so that not even [his] secretaries [would] know about it” and he asked that it remain confidential, his papers do not provide any additional clues to his thinking at the time.

Almost immediately after Wilkinson submitted his resignation, the three members of the First Presidency met with Neal A. Maxwell in a very short interview and asked him to serve as Church commissioner of education, to report to them, and, in turn, to become Wilkinson’s direct line supervisor. Maxwell was also charged with overseeing all of the LDS Church’s educational affairs, including other schools and college-level institutes of religion and high school seminaries. At the time of his appointment, Maxwell was a former political science professor and highly regarded University of Utah administrator in charge of all of the university’s nonacademic functions. He had developed a strong bond prior to this time with Elder Harold B. Lee, who saw Maxwell as a respected scholar and Christian disciple. He was the first Church commissioner of education to oversee a BYU president, as prior ones had generally been in charge of Church education except BYU. The one other exception was Wilkinson himself, who held the office jointly.
with his BYU presidency up until his failed Senate run in 1964.42

**Jay W. Butler, Assistant to Ernest L. Wilkinson for Special Assignments**

President Ernest L. Wilkinson took his next concrete step toward the J. Reuben Clark Law School on July 16, 1970, when he asked BYU ancient scripture instructor Jay W. Butler to spend “half his time assisting me in administrative matters for the coming [academic] year.”43 Butler was a Utah native and Columbia Law School graduate44—like Affleck and Clark—who would spend the next year doing much of the supporting legwork for Wilkinson researching multiple issues involved in starting a law school. Personally hired by Wilkinson three years previously, Butler later observed that his early 1967 recruitment carried with it an unspoken promise of some future work beyond teaching religion classes and that Wilkinson insisted that Butler’s fall 1970 appointment was “the assignment for which he had brought [Butler] to the University.”45 By August 25, Butler had compiled a four-page draft memo on the need and feasibility of a BYU law school.46 This information was helpful two weeks later, when the full BYU board of trustees confidentially agreed to the executive committee’s June 18 recommendation to “authorize the University Administration to make a study of the possibilities of establishing a law school at Brigham Young University.”47 By the end of September, Butler was talking to Gordon Affleck about the Law School, and Wilkinson wrote that Neal A. Maxwell was “most anxious that we proceed as fast as we can on this,” adding “while he’s in the mood I would certainly like to oblige him.”48

Despite such anxiety, little was done until mid-November, when Wilkinson was on one of his many trips to his law firm in Washington, D.C., and began to plan for the next approval stage. Wilkinson had Butler talk privately to the deans of two new law schools (Hofstra and the
University of California at Davis) and the director of the Association
of American Law Schools about the costs of a building and law library.
Butler also gathered application figures from the University of Utah Law
School for the prior four years. The next day, on November 20, 1970,
Wilkinson and Maxwell “met with Elder Marion Romney with respect to
the matter of obtaining official consent to the formation of a law school—
to be presented to the Board of Trustees. In our presence Brother Rom-
ney phoned President [Harold B.] Lee and obtained consent from him to
bring it up at the board of trustees meeting on December 2nd.”

By this time, Butler’s feasibility study memo was nine pages long,
covering factors such as the recent increased demand for law students
(in Utah and nationally), accreditation agencies, and cost projections
for building, library, and staff. The start-up costs of a decent law
school building stumped Wilkinson, Butler, and other BYU officials in
weekend and day-after-Thanksgiving meetings as they wrestled with
how to cheaply remodel existing facilities such as the relatively small
Grant or Maeser Buildings on campus. Not until Monday, Novem-
ber 30, 1970, while driving to Salt Lake City to meet with Butler, Max-
wells, and Dee Andersen (secretary to the BYU board of trustees), did
Wilkinson decide to “boldly ask for a new law school building” despite
financial concerns.

Provisional BYU Board of Trustees Approval

Wilkinson was supported by Maxwell in asking for a new building
as part of asking for formal approval to establish the Law School at
both the December 1 meeting of the executive committee of the BYU
board of trustees and the December 2 meeting of the full board. In
addition, Wilkinson’s proposal had Romney’s strong support: “Elder
Romney called Brother Maxwell . . . aside and told him, ‘I want to build
a law school at BYU in honor of J. Reuben Clark, and I want you to
help me.’” The board gave provisional approval to establishing a BYU
Law School but asked that Maxwell and Wilkinson first explore Ameri-
can Bar Association (ABA) accreditation standards and Association of
American Law Schools (AALS) rules to insure no problems with the
Law School would negatively impact other BYU colleges and depart-
ments. The main areas of concern were blacks being denied the Mor-
mon priesthood and non-Mormons paying more than Mormons for
tuition. Other accreditation agencies had found these two issues not
to be problems with undergraduates at BYU, but the question was how
law school regulators would view them, particularly with the recent
AALS rule change requiring nondiscrimination in law school employment and admissions.\textsuperscript{57} In light of recent negative publicity and protests against the LDS Church’s religious policies concerning blacks,\textsuperscript{58} the board of trustees classified the Law School proposal as confidential and did not even include the matter in its regular minutes (relying on confidential memos instead).\textsuperscript{59}

Dallin H. Oaks’s Early Involvement

When considering how best to approach the American Bar Association, Wilkinson realized that the executive director of the American Bar Foundation was a BYU graduate, Dallin H. Oaks.\textsuperscript{60} Wilkinson telephoned and wrote an overnight airmail letter to Oaks asking him about ABA accreditation, but mostly about AALS membership criteria in the areas of tenure, autonomy, and faculty control of appointment and dismissal of faculty matters.\textsuperscript{61} Oaks talked to Wilkinson, then wrote back the next day, Wednesday, December 16, 1970, with information on ABA accredited and AALS member law schools, as well as telling Wilkinson about Professor Millard H. Ruud, the ABA consultant on accrediting law schools.\textsuperscript{62}

Five days later, Jay Butler was in Ruud’s office in Austin, Texas, where the two spent a few hours going over a potential BYU law school. Butler asked directly about the impact of the Mormon doctrine on blacks and the priesthood, as well as the tuition differences for Mormons and non-Mormons, while Ruud focused on the impact each would have on the Law School’s admissions policies. “[Ruud] gave it as his opinion that so long as there is no racial or religious bias in [BYU Law School’s] admissions policy and so long as there is an economic justification for the tuition differential[,] these present no obstacle to accreditation.”\textsuperscript{63} Ruud wanted to confirm this with Maximilian W. Kempner, chair of the Section of Legal Education and Admissions to the Bar of the ABA, and called him right then. Kempner agreed with Ruud, and the two of them suggested to Butler that BYU appear before the ABA Council of Legal Education at their winter meeting in Chicago seven weeks later, on February 4 and 5, 1971. Ruud then suggested BYU appear before the AALS at its meeting also in Chicago on February 2 and 3.

Butler’s purpose in visiting Ruud was to find any potential roadblocks: “After further discussion I asked Professor Ruud how strongly I could assure our Board of Trustees of our accreditation. He replied that based on what I had told him he thought I could be ‘very positive.’
I asked if he thought that would be true of the A.A.L.S. as well as the A.B.A. He said he was sure that it would.64

Butler returned to Utah and telephoned Oaks on December 23 about Millard Ruud appearing before the ABA and AALS on behalf of BYU. Oaks gave his suggestions on dealing with the decision makers, the tuition differential, and the priesthood and blacks issue: “Less said about Negro-Priesthood issue the better—let them raise the question.” Oaks also gave his opinion about Wilkinson not attending the meetings: “Because of Wilkinson’s conservative political reputation it would be best for someone else to go if an appearance must be made.”65 Oaks followed up by writing Wilkinson about (1) tenure requirements, (2) AALS membership (“valuable and prestigious, but not crucial”), (3) ABA accreditation (mandatory), and (4) tuition differential based on religion (AALS)—“In my conversation with Jay Butler I alerted him to my concern that you may encounter resistance from the AALS group if the BYU policy of charging higher tuition to non-members also applies to its law school.”66

Wilkinson stewed over this information for a little while, and on the last day of the year “had a long conference with [BYU Vice President] Bob Thomas with respect to whether we should try to get a preliminary
hearing before committees of the American Bar Association and also the Association of American Law Schools, as to the requirements for a law school, when as a matter of fact they had no authority of any kind for any declaratory judgment.” Wilkinson was frustrated with being pushed into getting ABA and AALS preapproval and eventually decided with Butler to deal only with the required ABA and wait on the optional AALS. He knew from many years of working with the federal bureaucracies in Washington, D.C., where to put his efforts.

Wilkinson also felt comfortable enough with Ruud’s reassurances to take the information to the BYU board of trustees in Salt Lake City in very cold weather on January 6, 1971. Wilkinson wrote in his diary, “We got consent to organize a law school subject only to making sure that the meeting of the Legal Council of the ABA, to be held in Chicago in February, does not indicate any severe disfavor because of either our differential in tuition or our priesthood doctrine and the Negro.”

Butler and Wilkinson followed Oaks’s advice and submitted a written letter asking for clarification from the ABA Council of the Section of Legal Education and Admissions to the Bar about the two issues, to which Ruud added a covering memorandum. All three (Butler, Ruud, and Wilkinson) attended the general AALS and ABA meetings in Chicago in early February, but only Ruud attended the ABA Council meeting where BYU’s questions were discussed. The council determined that “the Negro Doctrine of the Mormon Church” would not be a bar to BYU having a law school, and that a tuition differential based upon LDS Church membership was a question to be determined after the school was in operation and not before.

What’s Next?

With all of the preliminary obstacles out of the way, Wilkinson was ready for the next phase. On Wednesday afternoon, February 10, 1971, he met with Neal A. Maxwell and two members of the LDS First Presidency (Harold B. Lee and N. Eldon Tanner) about (1) the Law School, (2) the ABA Education Committee, and (3) Wilkinson’s role in planning the Law School. Thus began a series of meetings over the next month between Wilkinson, Maxwell, Lee, and Tanner about Wilkinson’s future. His resignation would be announced on March 9, 1971, and yet in his diary he referred to these issues generically even as late as March 3 as “the preparation of a statement to be made by the First Presidency with respect to the establishment of a law school, etc., at the BYU.” His dissimulation extended in part to his own self and his strong desires
to be the new Law School’s founding dean and not being willing to recognize that Lee did not want Wilkinson in that post.73

This time of transition was not just for Wilkinson. Butler would still have plenty of Law School–related planning work to do for the next few months, but Wilkinson knew Butler wanted to return to complete his studies at Oxford University in England. As such, on February 23, while in Salt Lake City for one of his many meetings with Lee and Tanner, Wilkinson approached Bruce Hafen, who BYU Vice President Robert K. Thomas had suggested might have a “desire to come to the BYU.”74 Wilkinson contacted Hafen again on June 18 about taking Butler’s place as assistant to the president. Hafen was a 1967 University of Utah Law School graduate working at a Salt Lake City law firm but interested in an academic career.75 Eventually, Dallin H. Oaks, Wilkinson’s replacement as BYU president, personally hired Hafen as assistant to the president, and Oaks and Hafen both began working at BYU on August 1, 1971. Oaks assigned Hafen, among other duties, the task of continuing the preparatory work that Butler had begun—but as Oaks’s assistant, not Wilkinson’s.

Even as the special assistant, Butler did not know about Wilkinson’s pending resignation from being university president. Instead, his focus continued to be on the Law School, its faculty, and facilities. In mid-February, Butler spent two days at the University of Utah law library researching the published works of six LDS legal scholars who were potential Law School deans.76 He also talked to the dean of the University of Utah Law School, Samuel D. Thurman, who had been told about the potential BYU Law School a few weeks earlier.77 Butler’s talking to the ABA consultant Ruud and others alerted him to the need to get a building constructed before the Law School’s planned start date of fall 1973. He suggested on March 4 that Wilkinson retain an architect and then have the architect travel with a group to several other law schools with new
buildings.\textsuperscript{78} Butler also pointed out another hurdle, the lack of any qualified Mormon law librarians.\textsuperscript{79}

Wilkinson’s eyes were on the Law School rather than his BYU president successor, so he may not have focused too much on the selection committee recently organized from the combined board of trustees for BYU and the Church Board of Education. This committee, chaired by Marion G. Romney (with members Boyd K. Packer, Marion D. Hanks, and Neal A. Maxwell), picked the new presidents of Ricks College (announced February 2, 1971), the Church College of Hawaii (April 21, 1971), and Brigham Young University (May 4, 1971).\textsuperscript{80} Then, in an unusual move, the same committee was charged with selecting the founding dean of the BYU Law School.\textsuperscript{81} LDS Church leaders had Romney’s committee make the choice, since they felt the position was on a par with the leadership of the three major Church schools and, in ways that were magnified in the future, began the process of reducing Wilkinson’s personal control over the Law School from the very start. Although Wilkinson was added as a member of the committee when it came time to select BYU’s law school dean (along with Dallin Oaks and Apostle and former attorney Howard W. Hunter), he was not the committee’s chair and was one among five law school–educated members of the seven-member committee.\textsuperscript{82}

**Law School Announcement Day and Wilkinson’s Resignation from BYU President (March 9, 1971)**

Wilkinson confided in his diary about his resignation only the day before it happened.\textsuperscript{83} On March 9, 1971, the full BYU board of trustees held an early morning meeting in Salt Lake City, where his resignation was announced to the surprise of several members.\textsuperscript{84} Then, President Harold B. Lee traveled to Provo, where at a large meeting of the faculty and students of BYU, Lee announced Wilkinson’s retirement and also the future creation of the J. Reuben Clark Law School: “And this college [will] be opened probably in the fall of 1973 or as other conditions may dictate, with President Wilkinson [who] will remain and play a major role in the planning of that new college.” Lee talked about J. Reuben Clark Jr.’s legal career and study of international and constitutional law, then asked rhetorically, “Where else, but on this campus, should we be concerned about having a school of law where we can train lawyers who will defend the Constitution of the United States[?]” He added, in significant terms for the outmigration of Mormon lawyers, “If we can train
lawyers who are soundly based in the Constitution, it will be a long step forward in our judgment in helping to send out into the world men who will uphold and take their place in defending and protecting the basis of the foundation of this great United States of America.”

Wilkinson and his wife, Alice, also spoke with fondness for their twenty years of BYU service, with Ernest Wilkinson emphasizing he was not retiring but resigning to take over a new post—starting the Law School.

Wilkinson's Lame-Duck Presidency (March to July 1971)

Slowing down was definitely not in Wilkinson’s plans, although the more he pushed his leaders regarding the Law School, the more he found himself boxed in. Used to being in sole control of the university for twenty years, he was unaccustomed to being a team player with the other Law School creators. Wilkinson continued to lead the university, but most of his attention was on the next big steps for the Law School, the dean, professors, and physical facilities, and increasingly on defining his new role. On March 17, he and other LDS Church leaders met with
University of Utah’s law school dean, Sam Thurman, at a meeting set up by Neal A. Maxwell, about the state’s second law school. At the end of March, Wilkinson and his wife went to the Salt Lake airport to pick up Woodruff “Woody” J. Deem, who gave the BYU forum assembly speech on Thursday, March 25. Deem was a county district attorney in southern California, a former employee in Wilkinson’s law firm, and would be a future BYU law professor. In April, Wilkinson sent public letters to all the attorneys in Utah and private letters to all the LDS bishops in the United States asking for suggestions and names of potential BYU law professors, and then spent time sorting through and replying to their responses. Wilkinson wanted experienced practitioners teaching basic law at the school rather than academics using the legal classroom for social science or multidisciplinary explorations. He searched for “‘conservative’ faculty members who believe that [their] mission is to teach law and not propaganda.”

After Dallin H. Oaks’s appointment as BYU president was announced in early May, he and Wilkinson shared notes on potential professors and deans, both quickly realizing that the number of nationally well-respected lawyers or law professors who were also committed Mormons was relatively few. In one memo from Butler to Wilkinson about a meeting with Oaks in late May, Wilkinson appended a handwritten note to himself with the mark of an “X” before the names of three of twenty-two potential law professors. At the bottom of the page, he included the notation, “X Would command instant respect in teaching Professors.” (The highlighted names were Carl S. Hawkins, Rex E. Lee, and Arvo Van Alstyne.) Wilkinson focused on the political views of the potential deans and professors and became alarmed when Marion G. Romney in mid-May authorized him “to go ahead and make a study of all possible faculty appointees, including a prospective Dean,” but not to have the whole selection committee follow Wilkinson’s plan of studying “all of the speeches of President [J. Reuben] Clark so that we would know that the new faculty and in particular the Dean shared President Clark’s viewpoint.”

In the midst of the dean search on April 7, 1971, Wilkinson met “with Brother Hunter and later with Brother Romney, from which it was evident that what I am to do with respect to the Law School is very ill-defined and uncertain.” From the start, Wilkinson faced decreased reliance by LDS Church leaders on his outdated legal education expertise with the selection on March 27 of Oaks, an experienced legal academic and former acting dean of the highly regarded University of Chicago
Law School.\textsuperscript{98} Oaks was also thirty-three years younger than Wilkinson, who turned seventy-two on May 4, 1971. The First Presidency and BYU board of trustees were turning to Oaks on the Law School’s future, while reducing Wilkinson’s scope of influence. By the end of June, Wilkinson would have a one-page “Ground Rules and Guidelines for the Role of Ernest L. Wilkinson in Connection with the Creation of the J. Reuben Clark College of Law” written up by Maxwell and cleared by Oaks.\textsuperscript{99} Wilkinson had more success initially with pushing forward the preliminary plans for the Law School building. Much of the eventual design of the Law School building was already in place by the end of July because Wilkinson energetically pushed to have the building on track to be planned, built, and ready by the first day of classes two years later. He had the BYU physical plant draw up plans by March 23 for the proposed (and eventually final) law building location on the east side of campus.\textsuperscript{100} He selected the architectural firm Fetzer & Fetzer—who also planned the Ogden and Provo LDS temples—and sent them in April with various BYU representatives to nine recently constructed law school buildings across the country.\textsuperscript{101} Also in April, he secured board of trustees approval for the size of the building (which included space for three LDS student wards in addition to regular law school functions).\textsuperscript{102} His final act as BYU president was to sign the architectural contract with Fetzer & Fetzer on his last day in office, Saturday, July 31, 1971.\textsuperscript{103}
Dean Selection and Open-Heart Surgery

Wilkinson moved into another office on the west side of campus, and on Wednesday, August 4, received Maxwell’s letter with “Ground Rules for the Selection of the Dean.” He chafed at the restrictions but continued making appointments for prospective law deans to meet with the selection committee. He summarized and distributed to the selection committee the qualifications of the thirteen men interviewed in August and September. He pushed for a politically conservative dean to head the Law School and for a while favored Woody Deem. He also worked to become familiar with the writings and reputations of the various candidates. Meanwhile, Dallin Oaks also asked Jay Butler’s replacement, Bruce Hafen, to gather the background information Oaks desired about prospective deans. Wilkinson favored a law school similar to his New Jersey experience in the early 1930s, where law students would be taught basic legal drafting and law practice skills and was put off by notions that the Law School needed to have academically respected teaching methods and faculty publications that would be amenable to accreditation and scholarly reputation. Wilkinson disagreed often with Maxwell, Oaks, and others on the committee who were looking past the trade school idea of a law school to a school with strong enough academic foundations, professional stature, and political balance to have a national impact on the legal profession and the development of the law among judges and legislators.

A personal event outside of Wilkinson’s control or plans surfaced in early September, with him needing open-heart surgery. He recorded in his diary on Monday, September 6, 1971, that he was committed to working on only two things at that point, the Law School dean and his surgery. (Despite that resolution, he met the very next day with Cleon Skousen about the BYU centennial history which Skousen was editing and talked about a potential coeditor of the volume.) The dean search took most of his attention until Wilkinson’s son Dr. E. L. Wilkinson, a cardiologist, insisted he meet with heart surgeon Dr. Russell M. Nelson. That meeting took place on September 21, and definite plans were made for an October 6 hospital admittance and October 8 open-heart surgery in Salt Lake City. Even then, Wilkinson did not let go and had the next dean selection committee meeting moved forward a week to the day before he went in the hospital.

Others were interested in Wilkinson being around after his surgery. On Thursday, September 30, 1971, Wilkinson went to a clinic in Salt Lake City in preparation for his operation and was invited to come to
the temple there by N. Eldon Tanner, where Wilkinson was given an anointing and blessing by Tanner, Harold B. Lee, and all the members of the Twelve Apostles. Wilkinson got his legal and financial affairs in order, updated his will, and spent some time with his family that weekend. On Tuesday, October 5, Wilkinson spent the morning with the selection committee in Salt Lake City, narrowing the dean’s list down to three or four. Wilkinson vacillated in his choices, as having a conservative political viewpoint dominated his thinking, while other committee members looked to overall academic credentials, religious faithfulness, and leadership ability. In Provo that evening, Dallin Oaks and Bruce Hafen came to Wilkinson’s office and knelt in prayer with him and his secretaries before his hospital stay.

By October 25, the decision was made—with Wilkinson concurring—to have Arizona attorney Rex E. Lee become the founding dean of the BYU Law School, and Lee visited a convalescing Wilkinson on that day in that capacity. Wilkinson recalled a month later, “I should record also that the day after I returned to my home, which was just two weeks and three days after my operation, I had, without the doctors knowing it, a conference with the newly appointed Dean of the Law School, Rex Lee, which I appreciated.” The public announcement of Rex Lee’s deanship came two weeks later on November 9, 1971, which Wilkinson did not

Dean Rex E. Lee, speaking at the building groundbreaking ceremony for the J. Reuben Clark Law School building on May 1, 1973. Courtesy Perry Special Collections, BYU.
attend because he was home recuperating. Soon after, Wilkinson’s doctors sent him to southern California for a month.116

**Reduced Direct Role in BYU Law School**

Upon his return to Utah in early December 1971, Wilkinson continued to lobby without much success for his involvement with the Law School faculty, building, and purposes. Since he was not going to be the BYU Law School dean as he had hoped and an earlier title “Special Consultant to the J. Reuben Clark College of Law”117 was less than he wanted, he spent some time floundering. He wrote members of the dean selection committee with suggested procedures for picking the rest of the initial faculty;118 felt he had to defend his work on the Law School building from suggestions by Oaks, Lee, and Hafen for changes;119 and wondered what he could say about the Law School’s—and his—purpose while fund-raising. Others asked what he was doing in relation to the new BYU Law School. His longtime secretary passed on a student newspaper reporter’s query, “‘What role is President Wilkinson going to play?’ . . . Many students as well as faculty members had assumed you were to be the new dean.” She had volunteered, “I told him that it was my understanding it had never been planned that you would be the dean even from the start, but that I would ask you for the answer to this question.”120 Wilkinson traveled to Arizona briefly at the request of Dallin Oaks to meet with Rex Lee again on building matters and other Law School issues121 and came away well aware that Oaks and Lee would listen but not blindly take Wilkinson’s advice.

By this time, Wilkinson was a BYU employee reporting directly to Oaks (instead of to Neal A. Maxwell as had been the case prior to his heart surgery). On Thursday, December 16, 1971, Oaks approached Wilkinson with another place to put his energies and asked him “to take over the editorship of the history of BYU for the [University’s] Centennial.”122 Wilkinson then approached individual members of the BYU board of trustees about his Law School–related role,123 which led to a meeting of Wilkinson with the LDS First Presidency on January 4, 1972, regarding (1) the function of the selection committee for the Law School dean and faculty, (2) Wilkinson’s function regarding the same, and (3) the request that he be the BYU one-hundred-year history editor.124 The next week Wilkinson talked with Rex Lee about possible law faculty appointees,125 agreed to be the history editor in chief,126 and talked with Marion G. Romney “with respect to how I can be helpful in the establishment of the Law School.”127
On January 18, Oaks approached Wilkinson about his Law School role in connection with the public announcement of him becoming the editor in chief of the BYU history. Wilkinson reported on their long meeting in his diary: “I agreed that I would not insist that the notice of my appointment would refer to my having a ‘major responsibility for the establishment’ of the Law School, but we agreed also that I would be continuously consulted and have a voice with respect to (1) the appointment of the faculty, (2) the law school building, and (3) the curriculum. Dallin agreed that he would call Rex Lee and have Rex phone me and assure me this was in his mind, which he did the next day.” Other agreements followed, with a “Memorandum of Understanding and Agreement Regarding Fund-Raising Plans for the New Law School at Brigham Young University” officially adopted on January 21, 1972, by the College of Law Development Committee, of which Wilkinson was a member. The revised and approved building plan was signed by Wilkinson, Oaks, Lee, Bruce Hafen, and others on February 1. He became a charter member of the J. Reuben Clark Law Society after it was first proposed in the same development committee meeting on February 2, 1972.

Wilkinson remained keenly interested in the Law School for the rest of his life but was not involved in its day-to-day operations, except for select occasions. Rex Lee asked him to help recruit Woody Deem to come as a law professor in fall 1972, and Wilkinson helped Deem find a home and a contractor to fix it up and make the arrangements to move to Utah from California. Wilkinson served nominally on the admissions committee during 1972–73, deciding with others which student applicants would be chosen for the charter class. To ease local concerns about too many lawyers, he compiled a legal needs survey in August 1973 showing the demand within Utah for more law students. He gave the opening prayers on May 1 (the law building groundbreaking) and August 27, 1973 (first day of the law classes), typing up and putting in his speech files the August 27 three-page-long prayer, which served as his speech to the charter class law students on the importance of studying the U.S. Constitution. At the Law School building dedication in September 1975, he read another script, this one written by Oaks and Wilkinson regarding Justice Lewis F. Powell Jr.’s service to the legal community.

Wilkinson was a consistent fund-raiser for the Law School for many years and led the way by example when he and his wife Alice gave property worth $1 million to the university in late 1973, with $250,000 earmarked for the George Sutherland Chair at the Law School. (His family later contributed significant amounts to establish the Ernest L.
Wilkinson Chair at the Law School.) He wrote up a chapter on the Law School’s beginnings in the four-volume BYU history, which was completed on October 22, 1976, a day before Wilkinson experienced another massive heart attack. He came to the Law School occasionally to speak to students, for example giving his “How to Make a $2,800,000 Fee” speech on September 22, 1977. Through these years, up until his death on April 6, 1978, Ernest L. Wilkinson continued to be interested in the J. Reuben Clark School of Law at BYU, alternating between pride in its successful establishment and disappointment that it was not the politically conservative institution he had desired. He did not publicly criticize the law school founders, Oaks, Lee, and Hawkins. Privately, he was far more likely to occasionally point out deficiencies in other competing institutions than lapses at BYU.

Wilkinson and the Outmigration: On the Shoulders of Giants

The second dean of the BYU Law School, Carl S. Hawkins, pointed out that Wilkinson’s reduced involvement came through personnel selections rather than policy decisions by LDS Church leaders. There was no duel of memos where Wilkinson could overdocument his position and “win” via a flood of words. Yet Wilkinson was personally involved years before the Law School’s start in the lives of all three of the Law School’s founders, Dallin H. Oaks, Rex E. Lee, and Hawkins. Like other outmigrant Mormons, Wilkinson had been from Utah and understood how to navigate the business and political climates in the rest of the country and played an early key role in the professional careers of Oaks, Lee, and Hawkins as they left the Mormon West for the Midwest and Washington, D.C.

Both Oaks and Lee were students at Brigham Young University while Wilkinson was president, at a time when BYU was much smaller and Wilkinson more in touch with each student’s situation. For Oaks, Wilkinson personally wrote letters of scholarship recommendation in 1953 to major law schools and was pleased to write Oaks a congratulatory letter in 1957 on his U.S. Supreme Court clerkship appointment. Rex E. Lee was BYU student body president in 1960 and involved in a number of meetings and activities with Wilkinson. Lee’s autobiography includes a photo from that time period of Lee as young student, LDS President David O. McKay, and Wilkinson.

Hawkins’s first job out of law school was as an associate in Ernest Wilkinson’s Washington, D.C., law firm for a year, after which he was a law clerk to Chief Justice Fred M. Vinson of the U.S. Supreme Court,
followed by working as a named partner in Wilkinson, Cragun, Barker & Hawkins from 1953 to 1957. From there, he went to the University of Michigan Law School for sixteen years, where he distinguished himself prior to joining the initial BYU Law School faculty in 1972. With this close association, Hawkins did not want to come to BYU until he was certain Wilkinson was not in charge and was not making the Law School into only a practitioner’s prep school. At the same time, Wilkinson was strongly opposed to hiring Hawkins for the Law School. During the dean search, Wilkinson wrote that he loved Hawkins but didn’t want him due to his differing political views. Only after Hawkins was reassured by Oaks and Lee in mid-1972 that Wilkinson was one step outside the Law School circle did he agree to come and take his own crucial place as the Law School’s founding guide.

All three of these lawyers knew Wilkinson well. There were no strangers here. Since Wilkinson himself was loyal to those who had helped him in the past, he assumed that Oaks, Lee, and Hawkins would allow him to do what he wanted in regard to the Law School. Instead, Oaks, Lee, and Hawkins went out of their way repeatedly to set their
boundaries with Wilkinson while honoring their personal relationship. Many memos during the 1970s contain expressions of gratitude for Wilkinson’s work in the early days of the Law School as well as his consistent follow-through on any small tasks he was assigned. 156 They knew that Wilkinson was the unique lawyer who finished projects on deadline, in addition to possessing the normal attorney traits of being good at advocacy and giving advice. They did as Wilkinson himself had
done for so long; they worked their hardest to create the future as they hoped it to be.

Although it was not his reason for growing BYU, Ernest L. Wilkinson built the university large enough that it could support a major law school. He gave his time, money, and heart to Brigham Young University, creating a place where Mormon students from all over the country could meet, learn, and be part of the larger LDS diaspora internationally. Wilkinson caught the spark from Gordon Affleck regarding a J. Reuben Clark College of Law, secured the preliminary approvals, laid out the original building, picked the architects, helped choose the charter class, and was part of the discussions leading to the first dean. But even before those events, Wilkinson was there to help Dallin H. Oaks, Rex E. Lee, Carl S. Hawkins, and others, long before their actual involvement in the school’s establishment. Wilkinson’s crucial early work laid the foundation on which the eventual BYU Law School leaders would build.

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Besides the individuals cited in the article’s footnotes and the many reviewers, two other individuals were crucial to researching this article: G. Wesley Johnson Jr. and J. Gordon Daines III. Now retired, Dr. Johnson taught public history to Galen at BYU in 1987. He also reviewed the manuscript and encouraged Galen in writing this article as part of his forthcoming book, *Emergence of the Modern Mormon Elite* (Oxford University Press). Gordon Daines, as BYU University Archivist, was always helpful, patient, and willing to go the extra mile in finding and providing relevant sources. “Loyal Opposition” is a better article because of their professional and personal assistance to Galen Fletcher in telling the story of the BYU Law School’s “prehistory.”


8. See generally Deem and Bird, Ernest L. Wilkinson, 16–278; see also Alice L. Wilkinson, interview by Virginia Poulson, September 28, 1979, University Archives Oral History 47, Perry Special Collections.


16. “Wednesday, July 2, 1969 and Thursday, July 3, 1969,” Ernest L. Wilkinson, Diary, folder 2, box 103, UA 1000, ELW Papers. (Wilkinson's diary while at BYU comprises boxes 99–105 in UA 1000, ELW Papers, arranged in chronological order. Hereafter reference will only be made to “ELW, Diary,” not the archival box or folder numbers.)


18. ELW, Diary, Sunday, January 18, 1970.


21. During his two decades as BYU president, and “on several occasions Wilkinson . . . proposed the organization of an Institute of Government for the purpose of teaching . . . political principles.” Deem and Bird, Ernest L. Wilkinson, 509.


24. F. Burton Howard, “Keeper of the Flame,” Clark Memorandum (Fall 1994): 24. Romney's diary says eighty law students were invited, while Wilkinson's diary says sixty-five attended.

25. ELW, Diary, Thursday, April 16, 1970.


27. See Harry Dees to Ernest Wilkinson, September 26, 1970, folder 1, box 268, UA 1000, ELW Papers. A BYU Library employee on sabbatical, Dees shares his lengthy, negative “impressions of the law school at the University of Utah after a year working in the law library.”


31. ELW, Diary, Saturday, May 2, 1970.
33. While a member of the LDS Church’s First Quorum of the Seventy, F. Burton Howard wrote Marion G. Romney: His Life and Faith (Salt Lake City: Bookcraft, 1988).
35. Wilkinson’s last day as BYU president was later moved up a month to July 31, 1971.
36. Minutes of Meeting of Executive Committee of BYU Board of Trustees, June 18, 1970, pp. 9–10, in “Executive Committee of B.Y.U. Board of Trustees, June 4, 1967 thru June 3, 1970,” box 248, UA 1000, ELW Papers; see also Hawkins, Founding, 2; see also Wilkinson, Brigham Young University, 4:247.
39. Wilkinson to Smith and Counselors and Board of Trustees.
40. See Hafen, Disciple’s Life, 338. Maxwell’s appointment by the LDS First Presidency was later ratified by a combined meeting of the BYU and Church Educational System boards of trustees. See Minutes of Executive Session of Combined Church Board of Education and Brigham Young University Board of Trustees, August 12, 1970, pp. 2–4, folder 5, box 252, UA 1000, ELW Papers. 41. See Hafen, Disciple’s Life, 332, 336–39.
43. ELW, Diary, Thursday, July 16, 1970. A month before, at the same meeting of the executive committee of the BYU board of trustees where the law school study was approved, Wilkinson was “authorized, if deemed advisable, to appoint Jay W. Butler Assistant to the President for Special Assignments.” Minutes of Meeting of Executive Committee of BYU Board of Trustees, June 18, 1970, p. 3, in “Executive Committee of B.Y.U. Board of Trustees, June 4, 1967 thru June 3, 1970,” box 248, UA 1000, ELW Papers.
44. “Jay Butler, a native of Ogden, Utah, graduated with high honors from Harvard University (B.A. 1962) and from Columbia University Law School (J.D. 1966) where he was a Columbia International Fellow. As a Rhodes Scholar, he also studied law at Magdalen College, Oxford. . . In addition to many years in the private practice of law in Denver and Salt Lake City, Jay has been in-house
General Counsel for Ireco Chemicals, . . . was a member of a Wall Street investment banking firm, Weiss Peck & Greer, . . . was Chairman and CEO of Superior Manufacturing and Instruments Corporation, . . . and was Manager of Strategic Planning for the Family and Church History Department of the LDS Church. More recently Jay served as Acting Area Legal Counsel for the Church’s Caribbean Area. . . . He retired at the end of 2008.” Jay W. Butler, Short biography, October 10, 2008, unpublished document in the author’s possession.

45. Jay W. Butler, Personal history, as cited in email from Jay W. Butler to author, November 11, 2011, in the author’s possession. According to Wilkinson’s diary, he first interviewed Butler in Denver on January 23, 1967, and hired him on February 17, ten days before the BYU student spy ring became public knowledge. If Wilkinson was hoping to start a law school at that time or the near future, the spy scandal eclipsed such plans for three years. See ELW, Diary, Monday, January 23, 1967 (Butler interview), Friday, February 17, 1967 (Butler hire), and Wednesday, March 1, 1967 (newspaper reporters call Wilkinson at midnight); Bergera, “1966 BYU Student Spy Ring,” 178–79.


50. ELW, Diary, Friday, November 20, 1970, Confidential.


52. ELW, Diary, Friday, November 27, 1970. See also ELW, Diary, Saturday, November 21, 1970.
53. ELW, Diary, Monday, November 30, 1970.
54. See ELW, Diary, Friday, November 20, 1970, Confidential.
55. See ELW, Diary, Thursday, December 1, 1970; see also [Wilkinson to self], memo, December 1, 1970, folder 24, box 272, UA 1000, ELW Papers (“I move that we recommend to the Board of Trustees the establishment of the J. Reuben Clark, Jr., College of Law at Brigham Young University . . . Approved”).
58. Earlier that year, “President Wilkinson made a comprehensive report to the Board on athletic protests and disturbances on other campuses against BYU and the Church.” See “Minority Group Problems,” in Minutes of Meeting of Brigham Young University Board of Trustees, April 16, 1970, pp. 4–9, in “B.Y.U. Board of Trustees, Feb. 19, 1969 thru June 3, 1970,” box 249, UA 1000, ELW Papers.
59. See Dee F. Andersen to “All Members of the Combined Board of Education and Brigham Young University Board of Trustees,” confidential memo, December 2, 1970, folder 25, box 272, UA 1000, ELW Papers; see also Minutes of the Combined, Concurrent Meeting of the Church Board of Education and Brigham Young University Board of Trustees, Dec. 2, 1970, p. 6, folder 6, box 252, UA 1000, ELW Papers (confidential BYU matter to be handled via memo instead of in minutes).
64. JWB to ELW, memo, “Re: Conference with Millard H. Ruud,” p. 4.

67. ELW, Diary, Thursday, December 31, 1970.

68. ELW, Diary, Saturday, January 2, 1971.

69. ELW, Diary, Wednesday, January 6, 1971. See also Minutes of the Combined Concurrent Meeting of the Church Board of Education and Brigham Young University Board of Trustees, January 6, 1971, pp. 7–8, folder 6, box 252, UA 1000, ELW Papers.


71. ELW, Diary, Wednesday, February 10, 1971.


73. Not long after Wilkinson’s resignation became public, President Harold B. Lee told Wilkinson’s replacement, “‘Ernest wants to be the dean of the law school and that must not be.’” Dallin H. Oaks to author, June 25, 2012. “Romney and Lee may not have had a clear vision of the kind of academic institution they wanted to establish [for the BYU Law School], but it is clear that they wanted it to reflect credit on the name of J. Reuben Clark, Jr., and that Lee wanted to make sure that Wilkinson was not the controlling influence in shaping its character.” Hawkins, “Legal Education and Career,” 593.

74. ELW, Diary, Tuesday, February 23, 1971. “Thomas had been one of Hafen’s mentors during [Hafen’s] undergraduate days at BYU.” Hawkins, *Founding*, 8.


76. JWB to ELW, memo, “Re: Research Concerning Mormon Law Professors,” February 17, 1971, folder 24, box 272, UA 1000, ELW Papers. The six professors were Carl S. Hawkins, Edward L. Kimball, Spencer L. Kimball, Dallin H. Oaks, Douglas H. Parker, Frank T. Reed, and Arvo Van Alstyne.

77. JWB to ELW, memo, “Re: Research Concerning Mormon Law Professors.”


79. Butler to ELW, memo, “Re: Law School.” When Rex E. Lee was later announced as dean of the new law school, he worried, “‘Theoretically and
physically . . . the law school is built around the library. Librarians are just as scarce as hen’s teeth. A dean—anybody can come up with. But a law librarian, that’s another trick.” “Dean Lee, a Gleaning from Nation’s Legal Elite,” Daily Universe, November 10, 1971, 1. The remedy later taken was to hire a law graduate and train him in library work. See Bruce C. Hafen to Ernest L. Wilkinson, memo, September 17, 1971, folder 1, box 269, UA 1000, ELW Papers. Lee’s observation about few LDS law librarians played out as all of the BYU law library directors until 2005 were law graduates who obtained their library training after they were hired.

80. See Staff of the Church News, The Church in Action 1971: Yearbook of Activities of The Church of Jesus Christ of Latter-day Saints (Salt Lake City: Church News, 1972), 29, 32–33. Ricks College is now called BYU–Idaho and the Church College of Hawaii is now BYU–Hawaii.

81. Forty years later, Oaks commented, “Soon after my appointment as [BYU] president, the board of trustees appointed a six-member search committee to recommend the dean of the new law school. This was unprecedented. I know of no other instance in which the board followed this practice to identify a dean at BYU.” Dallin H. Oaks, “Unfolding in Time,” 17.


83. ELW, Diary, Monday, March 8, 1971.

84. Minutes of a Special Meeting of the Brigham Young University Board of Trustees, March 9, 1971, pp. 2–5, folder 6, box 252, UA 1000, ELW Papers; see also ELW, Diary, Tuesday, March 9, 1971.

85. Lee, in Speeches of the Year: Decades of Distinction: 1951–1971, 3; see also Ernest L. Wilkinson and Harold B. Lee, “Decades of Distinction,” March 9, 1971, audio file available at Speeches, Brigham Young University, http://speeches.byu.edu/index.php?act=viewitem&id=1745. Lee’s quotes are from the author’s audio transcripts rather than the published version edited by Wilkinson (see transcript on file with the author). The printed version reads, “Because of President Wilkinson’s great stature in the field of law, we have asked him to play a major role in the planning of a new college. . . . This college will probably open in the fall of 1973, or thereafter as circumstances may dictate.” Lee, in Speeches of the Year: Decades of Distinction: 1951–1971, 3.


87. ELW, Diary, Wednesday, March 17, 1971. A few days earlier Wilkinson wrote Thurman about meeting together and then included the postscript, “P.S. Since writing the above letter I have been informed that Neal Maxwell has already arranged for the committee appointed by the Board of Trustees and me to meet with you and Arvo [Van Alstyne] on March 17, at 2:30 PM.” ELW to Samuel D. Thurman, March 11, 1971, folder 25, box 272, UA 1000, ELW Papers.


89. See The Woodruff J. Deem Professorship in the J. Reuben Clark Law School, Brigham Young University ([Provo, Utah: BYU Law School, 1989]).
90. Jay W. Butler to LDS Bishops, April 19, 1971, folder 7, box 269, UA 1000, ELW Papers.

91. “I . . . looked over the list of about 900 attorneys that bishops sent in, from which we thought we would try and see those who would be eligible for law teachers. I found it to be woefully incomplete.” ELW, Diary, Sunday, July 4, 1971.

92. Robert O. Lesher to Ernest L. Wilkinson, February 10, 1972, folder 10, box 269, UA 1000, ELW Papers. This quote by Lesher is in response to Wilkinson’s query about Ray Jay Davis as a potential BYU law professor. Wilkinson had asked about Davis’s political and social philosophies and then his University of Arizona Law School teaching reputation. Ernest L. Wilkinson to Robert O. Lesher, February 1, 1972, folder 10, box 269, UA 1000, ELW Papers.

93. Dallin H. Oaks to Ernest L. Wilkinson, June 1, 1971, folder 24, box 272, UA 1000, ELW Papers.


95. Carl Hawkins later succinctly described how Wilkinson’s political leanings influenced his law school planning: “Public announcement of plans to establish the law school brought forth a flurry of comments from some Church members who thought that its mission would or should be to foster conservative political ideology. Wilkinson would not have identified with some of those extremists. While he was politically conservative, he was too good a lawyer to be taken in by the radical interpretations of constitutional law and history espoused by the John Birch Society. He would not hesitate, however, to take advantage of these conservative views to support the establishment of the kind of law school he wanted at BYU.” Hawkins, “Legal Education and Career,” 593.

96. ELW to self, memo, “Re: Conference with Marion G. Romney on May 14 with Respect to the Law School,” May 18, 1971, folder 11, box 267, UA 1000, ELW Papers. Wilkinson added, “Much to my surprise, Brother Romney said that Brother Clark had lived and had given his contribution to the Church and he had some doubt whether we could set up a law school that would follow his [political] views. He volunteered the information that Dallin Oaks and Neal Maxwell were more liberal than the two of us and he thought we would have difficulty getting that view over.”

97. ELW, Diary, Wednesday, April 7, 1971. Two days later—after needing permission from three different individuals to hire the building architects—Wilkinson lamented to himself, “I am going to have to have a determination made immediately as to my role in the establishment of the Law School.” ELW, Diary, Friday, April 9, 1971.

98. Oaks recently observed, “I was called as BYU President on March 27, 1971, and . . . my appointment was announced on May 4. . . . Having spent 10 years as a professor at the University of Chicago Law School, including over six months as acting dean, I had more experience with what would be necessary to establish a first-class law school than anything else for which I would be


100. Brigham Young University, Dept. of Physical Plant, “Proposed Law Building Location, 23 Mar. 71,” folder 24, box 272, UA 1000, ELW Papers (3’ x 5’ schematic drawing).


102. Minutes of the Combined Concurrent Meeting of the Church Board of Education and Brigham Young University Board of Trustees, April 7, 1971, p. 5, folder 6, box 252, UA 1000, ELW Papers.

103. “Architect’s Agreement Dated July 31, 1971, Between Brigham Young University and Fetzer and Fetzer, Architects, For the Design of a Law Building,” folder 4, box 268, UA 1000, ELW Papers. As incoming BYU President, Dallin Oaks then slowed down the law building plans until the founding dean and faculty were selected and could provide input. The delay resulted in the first two years of law classes (August 1973–April 1975) being held in temporary rented quarters a mile south of campus waiting for the Fetzer & Fetzer designed building’s completion.

104. “To my mind this memorandum is woefully inadequate because it will circumscribe me in the gathering of information which is essential. I will have to discuss this with him and with Dallin later.” ELW, Diary, Wednesday, August 4, 1971. Maxwell wrote the suggested guidelines, which Romney forwarded to the entire search committee. See Marion G. Romney to Ernest L. Wilkinson, memo, “Re: Search Committee,” August 3, 1971, appendix “Ground Rules in the Search of a Dean and Faculty for the J. Reuben Clark College of Law,” folder 6, box 262, UA 1000, ELW Papers.


106. See ELW to self, memo, September 20, 1971, “Re: Woodruff J. Deem as Prospective Dean,” folder 11, box 269, UA 1000, ELW Papers (sixteen-page memo); “I know that Deem meets every specification, and that’s why I pressed so hard for him.” Ernest L. Wilkinson to Marion G. Romney, October 5, 1971, p. 3, folder 24, box 272, UA 1000, ELW Papers.

108. Wilkinson learned of his physical condition after reluctantly having a full-scale medical exam at LDS Hospital over two days. This was for shortness of breath over the prior few months “which I have tried to conceal from everyone. . . . [T]he left ventricle, where I had had my heart attack fifteen years ago, had a very extended aneurysm. . . . My son estimates that the chances of my surviving are 75% as against 25% not surviving.” ELW, Diary, Monday, September 6, 1971.


110. ELW, Diary, Thursday, September 23, 1971.

111. N. Eldon Tanner and Harold B. Lee anointed, and Lee confirmed the anointing with a blessing assisted by all the other members of the Twelve Apostles. “This was gracious on the part of President Tanner and others, and I appreciated it very much.” ELW, Diary, Thursday, September 30, 1971; see also Ernest L. Wilkinson to The First Presidency, October 5, 1971, folder 2, box 272, UA 1000, ELW Papers.

112. ELW, Diary, Saturday, October 2, 1971.

113. ELW, Diary, Tuesday, October 5, 1971.

114. ELW, Diary, October 6 to November 29, 1971, p. 2.

115. See “Dean Lee, a Gleaning from Nation’s Legal Elite,” Daily Universe, November 10, 1971, 1; Hawkins, Founding, 10; Wilkinson, Brigham Young University, 4:257.


122. ELW, Diary, Thursday, December 16, 1971.


124. ELW, Diary, Tuesday, January 4, 1972.


126. ELW, Diary, Monday, January 10, 1972.
127. ELW, Diary, Thursday, January 13, 1972.
128. ELW, Diary, Tuesday, January 18, 1972.
130. “Law Building Program Requirements, Brigham Young University, Revised February 1, 1972,” 6, folder 3, box 268, UA 1000, ELW Papers.
132. “After the selection of [BYU Law School Dean Rex E.] Lee, Wilkinson, who had assisted in the selection but by that time was in the hospital recovering from heart surgery, was not called upon to perform any further assignments in the creation or operation of the law school, except for minor assistance in planning the law school building and in raising funds.” Deem and Bird, Ernest L. Wilkinson, 449; see also Wilkinson, Brigham Young University, 4:257.
134. Rex E. Lee to Ernest L. Wilkinson, November 14, 1977, box 267, folder 1, UA 1000, ELW Papers.
137. Ernest L. Wilkinson, “Opening Prayer at Beginning of J. Reuben Clark School of Law by Ernest L. Wilkinson, August 27, 1973,” folder 3, box 111, UA 1000, ELW Papers (box title: “Speeches Given by Wilkinson: Brigham Young University, 1971–1976”). Wilkinson spent over fifteen hours preparing this prayer/speech during the week and weekend before, including from 4:30 to 7 a.m. the morning he gave it. See Thursday, August 23, 1973 (1½ hours), Friday, August 24, 1973” (3 hours), Saturday, August 25, 1973 (2 hours), Sunday, August 26, 1973 (3½ hours), and Monday, August 27, 1973 (2½ hours), ELW, Diary. Three years later, Wilkinson published a quote from his prayer/speech to support his “Reasons for Founding a Law School at BYU,” in Wilkinson, Brigham Young University, 4:249. Wilkinson’s prayer/speech was not printed by the university with the other speeches in Addresses at the Ceremony Opening the J. Reuben Clark Law School, August 27, 1973 ([Provo, Utah]: Brigham Young University, 1973).
138. See “Citation: Associate Justice Lewis F. Powell, Jr.,” in Dedication: To Justice, to Excellence, to Responsibility: Proceedings at the Convocation and Dedication of the J. Reuben Clark College of Law, Brigham Young University, Provo, Utah, September 5, 1975 (Provo, Utah: BYU Press, 1975), 73–79; see also Dallin H. Oaks to Ernest L. Wilkinson, memo, “Re: Honorary Degree Citation for Lewis F.
Powell, Jr., “July 31, 1975, folder 4, box 267, UA 1000, ELW Papers; and ELW to Dallin H. Oaks, memo, “Re: Honorary Degree Citation for Hon. Lewis F. Powell, Jr.” August 6, 1975, folder 4, box 267, UA 1000, ELW Papers.

139. See, for example, the detailed twelve-page memo, Ernest L. Wilkinson, “Summary Report on Fund Raising Activities for the Brigham Young University as of Labor Day, September 4, 1972,” folder 2, box 269, UA 1000, ELW Papers; see also Wilkinson, Brigham Young University, 4:261.

140. “Wilkinson greatly admired George Sutherland (1862–1942), a graduate of BYU and a Utah Congressman, U.S. Senator for two terms, and Associate Justice of the United States Supreme Court from 1922 to 1938—the only man from Utah to be appointed to the Supreme Court.” Deem and Bird, Ernest L. Wilkinson, 531–532. “I admit that Sutherland has been an idol of mine. Whenever I appeared before the Supreme Court he would always invite me to his chambers and talk about Karl G. Maeser. Even though he never joined the Church, he idolized Maeser as few men did.” Ernest L. Wilkinson to Samuel D. Thurman, March 23, 1974, folder 1, box 267, UA 1000, ELW Papers. For an excellent article showing Sutherland’s BYU connections, see Edward L. Carter and James C. Phillips, “The Mormon Education of a Gentile Justice: George Sutherland and Brigham Young Academy,” Journal of Supreme Court History 33 (2008): 322–40.


142. Deem and Bird, Ernest L. Wilkinson, 539.

143. “This is the address I was originally scheduled to give almost a year before, but had to postpone indefinitely because of my heart attack the end of October [1976].” ELW, Diary, “May 1977 through December 24, 1977”; see “Address of Ernest L. Wilkinson to Students at the J. Reuben Clark Law School on September 22, 1977, on How to Make a $2,800,000 Fee,” folder 4, box 126, UA 1000, ELW Papers. Confederated Bands of Ute Indians v. United States, 120 Ct.Cl. 609–682 (1951) was the court case for almost $32 million dollars with attorney fees of 8¾ percent. See R. Warren Metcalf, “Ernest L. Wilkinson and Eighteen Million Dollars,” in Termination’s Legacy: The Discarded Indians of Utah (Lincoln: University of Nebraska Press, 2002), 49–73; “The Big Ute and Related Cases,” in Deem and Bird, Ernest L. Wilkinson, 185–243.

144. See, for example, Ernest L. Wilkinson to Gordon Burt Aﬄeck, April 27, 1976, folder 6, box 267, UA 1000, ELW Papers (talking about number of BYU law graduates); Ernest L. Wilkinson to Monte Neal Stewart, January 31, 1977, folder 11, box 267, UA 1000, ELW Papers (congratulatory letter to BYU law graduate appointed U.S. Supreme Court clerk); Ernest L. Wilkinson to Mary Anne Wood, March 24, 1978, folder 11, box 267, UA 1000, ELW Papers (writing to new BYU law professor on her BYU forum address).

145. As of 2013, BYU ranks among the top fifty law schools in the country, competing against many older institutions. For example, of the forty-three U.S. law schools approved by the American Bar Association after BYU, BYU is ranked higher (two-way tie for #44 out of all U.S. law schools) than any

146. For example, after seeing an alumni letter sent by the new University of Utah Law School dean, Wilkinson was “amused” at the dean’s concern “over the future of that school in view of the fact that in three short years Brigham Young University already has better facilities, a larger student body, and greater future opportunities.” Ernest L. Wilkinson to Dallin H. Oaks and Carl S. Hawkins, memo, “Re: The University of Utah College of Law,” November 4, 1975, folder 2, box 267, UA 1000, ELW Papers.

147. “The issues that predetermined the kind of law school that it was going to be came out of the personnel selections that were made by [President Romney’s] selection committee. The decisions were not made by debating abstract ideology that asked you what kind of law school it ought to be.” Carl S. Hawkins, “History of J. Reuben Clark Law School,” [2], February 2, 2009 presentation, History of Mormon Lawyering course, J. Reuben Clark Law School (transcript on file with the author); see also Hawkins, Founding, 5.


154. The day before his heart surgery, Wilkinson wrote the chair of the dean selection committee, “For your confidential information, I am definitely opposed to . . . a person with the liberal tendencies of Carl Hawkins—much as I love Carl, who started practice in my law office.” ELW to Marion G. Romney, October 5, 1971, pp. 1–2, folder 24, box 272, UA 1000, ELW Papers.


156. “I want to thank you for the great role you have played in the founding and establishment of this Law School.” Carl S. Hawkins to Ernest L. Wilkinson, memo, “Re: Law School Dedicatory Exercises,” September 17, 1975, folder 4, box 267, UA 1000, ELW Papers. “We will always be grateful to you for these and many other efforts during those crucial early days of this Law School.” Rex E. Lee to Ernest L. Wilkinson, November 14, 1977, folder 1, box 267, UA 1000, ELW Papers.