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Lawyers and the Rule of Law

*James D. Gordon III*¹

Welcome to J. Reuben Clark Law School. It is a privilege to study law, and it is a blessing to study it at Brigham Young University. The Law School's Mission and Goals state: "The mission of J. Reuben Clark Law School is to teach the laws of men in the light of the laws of God. The Law School strives to be worthy in all respects of the name it bears, and to provide an education that is spiritually strengthening, intellectually enlarging, and character building, thus leading to lifelong learning and service."²

One of the Law School's goals is to "[f]oster an enlightened devotion to the rule of law."³ Respect for the rule of law makes a free society possible. Without it, society could devolve into tyranny on the one hand or anarchy on the other. Incidentally, my favorite bumper sticker says, "Anarchists for good government." Lawyers help the rule of law to function. It could not exist without them.

In 1972 five men broke into the Democratic National Committee Party headquarters in the Watergate Hotel in Washington, D.C. They were arrested. It turned out that they worked directly or indirectly for the Committee to Re-elect the President. The burglars were tried and convicted. As the result of the case, additional information came out. Eventually it appeared that President Nixon, some members of the White House staff, and the attorney general of the United States had attempted to cover up the break-in and to obstruct justice.

The U.S. Senate conducted an investigation. I remember as a young man watching part of the Watergate hearings on television. The Senate committee discovered that President Nixon had a tape recording system in the Oval Office. The special prosecutor and the Senate committee issued subpoenas for the tape recordings. President Nixon refused to provide the tapes, citing executive privilege. He released edited transcripts of some tapes, but he refused to release the actual tapes.

President Nixon asked that a federal district court judge quash the subpoena, but the judge ruled against the president.⁴ The president appealed to the Supreme Court, which unanimously ordered President Nixon to produce the tapes.⁵ Six days later President Nixon complied with the Supreme Court's order. Ten days after that he resigned the office of President of the United States. *Time* magazine called Watergate “the worst political scandal in U.S. history.”⁶

The federal judge who presided over the trial of the Watergate burglars and who denied President Nixon's request to quash the subpoena was John J. Sirica. At the time he had a young law clerk named Todd. Many law students do a judicial clerkship, working for a judge for a year after graduation. Todd planned to take a job with a Washington, D.C., law firm after the end of his one-year clerkship. However, Judge Sirica telephoned the law firm and said, “I can't let Todd go. He is too valuable. He is the only person I can talk to.”⁷ So Todd stayed on longer as a clerk.

In April 2008, Todd—now Elder D. Todd Christofferson—was sustained as a member of the Quorum of the Twelve Apostles. When he was a law clerk, fresh out of law school, he helped the rule of law in our country to prevail.

In case you think that the rule of law is merely a jurisprudential abstraction, we might think about places in the world where the rule of law does not function well. In some countries, governmental corruption is common, and basic human rights are not protected. Some countries lack a stable legal system. Contracts are not enforced, commerce is underdeveloped, and people are not able to lift themselves out of poverty.

Lawyers help make the rule of law possible. They do so as law clerks, judges, legislators, and members of local governments. They do so by representing public entities and private parties, by enforcing the law, by defending against government overreaching, by resolving disputes, by solving problems, and by helping the civil and criminal justice systems to function. They counsel and help people to comply with the law, and they protect and vindicate people's rights. They are essential to a free society.

The Law School's goals mention “enlightened” devotion to the rule of law, suggesting that the law can be reformed and improved. Lawyers should work for legal reform and help to make a better society.

At the opening of J. Reuben Clark Law School, BYU President Dallin H. Oaks said:

The rule of law stands as a wall to protect civilization from the barbarians who would conduct public affairs and settle private disputes by power, position, or corruption, rather than by recourse to the impartiality of settled rules of law. Lawyers are the watchmen on that wall.⁸

President Oaks also said:

[A] lawyer's predominant professional loyalty should be to the principles of the law, not to the officials who administer them or to the person, organization, or other client in whose interest those principles are applied. A lawyer obviously owes a high duty of loyalty to his client, but the duty he owes to the Constitution and laws is higher still.⁹

Interestingly, President Oaks made those remarks in August 1973, during the same summer as the Senate Watergate hearings, when the rule of law was a topic of national focus.

Dallin Oaks himself had demonstrated that a lawyer's duty to the rule of law is greater than the duty to a client. As a young lawyer in Chicago, he was attending the deposition of an employee of one of his firm's clients. The witness began to lie under oath. Dallin Oaks got on the phone to the man's employer and said, "Either you get somebody down here who is going to tell the truth, or you get yourself another lawyer." Good lawyers have that kind of moral backbone.

The history of the Latter-day Saints illustrates the importance of the rule of law and of lawyers in upholding it. For example, on June 23, 1843, the Prophet Joseph Smith was arrested in Illinois by Sheriff Reynolds of Jackson County, Missouri, and another person. The charge was treason against the state of Missouri. Joseph Smith said:

[B]oth of them presented cocked pistols to my breast, without showing any writ or serving any process. Reynolds cried out, "... [I]f you stir I'll shoot..." I answered, "I am not afraid of your shooting; I am not afraid to die." I then bared my breast and told them to shoot away...

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

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

I again stated to Reynolds, "I wish to get counsel," when he answered. . . . ["Y]ou shan't have counsel: one word more, . . . and I'll shoot you" . . . I saw a person passing and shouted to him through the window, "I am falsely imprisoned here, and I want a lawyer."¹⁰

Ultimately, Joseph Smith was able to get a lawyer, and he obtained a writ of habeas corpus, which resulted in his freedom. One year and four days later he was murdered by a mob at Carthage Jail. If any people believe

in due process of law, in protecting people's constitutional rights, and in the rule of law instead of mob rule, it should be the Latter-day Saints.

Lawyers have played a critical role in our country's history. Our nation could not have been founded without the efforts of lawyers like Thomas Jefferson, John Adams, James Madison, and others. Many of the signers of the Declaration of Independence and about one-half of the signers of the Constitution were lawyers. Lawyers serve in elected and appointed positions in federal, state, and local governments. In large measure, ours is a society led by lawyers.

Many lawyers serve ably and well; they are clear thinkers and speakers; they stand up for us and speak in our behalf. They also help resolve disputes, and good lawyers do this in a civil, peaceful, and noncontentious manner. The Savior said that "he that hath the spirit of contention is not of me."¹¹ He also said, "Blessed are all the peacemakers, for they shall be called the children of God."¹²

The study of law is important. Brigham Young said:

If I could get my own feelings answered I would have law in our school books, and have our youth study law at school. Then lead their minds to study the decisions and counsels of the just and the wise, and not forever be studying how to get the advantage of their neighbor. This is wisdom.¹³

He also said, "[G]et up classes for the study of law."¹⁴

Law school is a great time of preparation for future service. I loved law school, and I would like to give you a few words of advice to help you enjoy it and to have a successful experience. I hope that in doing so I don't sound like Polonius to Laertes in Shakespeare's play *Hamlet*—especially when I remember what happened to Polonius. I'm not referring to the fact that he was killed behind the arras, but rather that over the centuries he has been portrayed by literally thousands of bad actors.

Polonius gave such sage advice as "[n]either a borrower nor a lender be."¹⁵ I suppose that this is fine if you want to live in preindustrial England and build your own house out of mud and sticks. But if you don't care for a house made of wattle and daub, a mortgage is probably in your future—at least if we make it through the current mortgage crisis. And many of the people who will help resolve it will be lawyers. Since this is J. Reuben Clark's law school, I should add that although J. Reuben Clark himself borrowed money to attend law school, he paid the debt off as soon as he could.

First, you might recall a story about a person who was asked to build a house. He decided to cut corners, use cheap materials, and do a poor job. When he was done, the owner handed him the key, and said, "I'd like to give you this house as a gift." Attending law school is like that. You can work hard and do a good job. Or you can cut corners and do a poor job. Either way, you're the person who is going to live in the house for the rest

of your life. Your legal education will enable you to serve others and to provide a living for you and your family. At the end of law school, we'll hand you the key. You will have created your own "house of learning."

Education is one of the few things for which people want to get less than they pay for. The reason is that, while tuition is one cost, an additional cost is the work required to learn. Some people love to learn. Others seem to think that they know enough already. It reminds me of the story of a man who was asked if he wanted to learn a foreign language. He replied, "If heaven intended us to learn a foreign language, then how come the Bible was originally written in English?"

If you decide not to work hard, not only will you cheat yourself, but also you will affect others who will depend on you, including your family and the people whom you will serve. I encourage you to work diligently, to learn a lot, and to prepare well for the future.

Second, keep up on class preparation, attendance, and outlining. There are people who have this philosophy: "The sooner you get behind, the more time you have to catch up. Do it today!" However, I recommend keeping up.

Third, have a study schedule. You could study all the time. I suggest that you have a time when you will study and a time when you will do other things. Decide on a schedule that works for you. Then try to stick to your schedule.

Fourth, break the sound barrier in class. Participate in the class discussion. You can improve your thinking and oral advocacy skills through practice. I used to be a slow thinker. Once I was attacked by a couple of snails. The police asked me about it, and I said, "I don't know; it all happened so fast." Then, in one law school class I had a professor who was a master of the Socratic method. Class discussion was exciting, and I decided that I wanted to get in on some of the fun. So one day I prepared extra well. I made a point in class. The professor didn't humiliate me. It wasn't so bad. The next time was a little easier. You can get better at thinking quickly. You can learn to respond when you're being challenged and a lot of people are looking at you.

Fifth, have things in your life other than law school. Take time for family, friends, outside activities, physical exercise, and recreation. It's also important to fulfill Church callings and to perform other service. These things are important for their own sake, they help you keep a broader perspective on things, and they help keep you balanced.

Sixth, take time to become friends with your classmates. These friendships can last throughout your whole life and can be one of the sweetest aspects of your law school experience. Your classmates are bright, good, and fascinating people. Take time to make friends.

Seventh, don't be afraid of failure. Perhaps you're the kind of person who looks in the mirror and says, "No success can compensate for being a

total failure.” Don’t be afraid. Fear causes anxiety. All of you have the background and academic qualifications to succeed here. And you will succeed, if you do the work.

Eighth, remember that honest failure is better than dishonesty. How many of you have had a dream in which you’re not prepared for an exam? You wake up, and you’re so relieved to realize that it was only a dream. Well, now you’re in law school, and the nightmare is real. If you get a failing grade, you can recover from that. You can take the class again. But if you cheat or plagiarize, and you get caught, you will be in serious trouble. You worked too hard to get here to jeopardize your future through dishonesty.

Even more important than the pragmatic reasons for being honest are the moral and spiritual reasons. You want to be a person of character. The pressures to be dishonest in law practice will be even stronger than they are in law school. Also, to do your best in law school, you need the assistance of the Holy Ghost, which means that you need to try to be honest. Try to avoid situations that create temptations for cheating or plagiarizing. One of those situations is procrastination. If you keep up and are prepared, you won’t be as tempted to depart from your standards of honesty.

It’s not a coincidence that two of the values I’ve emphasized are hard work and honesty. They are two hallmarks of the life of J. Reuben Clark, the member of the First Presidency after whom the Law School is named. They should also be hallmarks of the students and graduates of this law school.

Lastly, enjoy law school. It’s exciting, fascinating, challenging, and fun. Sometimes law school has been compared to a besieged city: everybody outside wants in, and everybody inside wants out. But the secret to happiness is not to look forward to some future time when all your problems will be solved. The secret is to be happy today. There is joy in learning. Hopefully you will be lifelong learners.

In the Doctrine and Covenants, it says that “intelligence” is “light and truth.”¹⁶ It also says:

Whatever principle of intelligence we attain unto in this life, it will rise with us in the resurrection.

And if a person gains more knowledge and intelligence in this life through his diligence and obedience than another, he will have so much the advantage in the world to come.¹⁷

Note that it says that intelligence is obtained through diligence and obedience. That is an important principle. In the very next verses, it says:

There is a law, irrevocably decreed in heaven before the foundations of this world, upon which all blessings are predicated—

And when we obtain any blessing from God, it is by obedience to that law upon which it is predicated.¹⁸

If we do our best, God will strengthen us beyond our natural abilities and will bless us.

Law school is a wonderful time of preparation for the future. You have a mission in life. That mission has multiple dimensions. You have agency to choose your life's work and goals. Your legal education will help you to accomplish those goals and to fulfill your mission.

We're glad that you've decided to attend J. Reuben Clark Law School. I believe that being a student here is a position of trust. You will have certain responsibilities, and you will receive tremendous benefits. You will benefit from the contributions of faculty, staff, and tithe payers who make your legal education here possible. You will receive a heritage from students who have gone before you, and you will leave a legacy for the students who follow. Those contributions, that heritage, and that legacy are consecrated to an important and noble work. You are the most important part of that work. May the Lord bless you as you begin law school.

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James D. Gordon III received his JD from the University of California, Berkeley, in 1980 and clerked for Judge Monroe G. McKay of the U.S. Court of Appeals for the Tenth Circuit 1980–81. He served as associate academic vice president for faculty at Brigham Young University 1996–2000 and as interim dean of J. Reuben Clark Law School 2008–09. He is currently Marion B. and Rulon A. Earl Professor of Law at J. Reuben Clark Law School in Provo, Utah.

Notes

1. Apologies and thanks to Johnny Carson, Cliff Fleming, Doug Gordon, Elder Bruce C. Hafen, Gary Hooper, Steve Nelson, and Toby Threet.

2. BYU Law School, Mission and Goals of the J. Reuben Clark Law School (quoting *The Aims of a BYU Education*) <http://www.law2.byu.edu/mission_goals_learning_outcomes/missionandgoals.php> (accessed Dec. 19, 2008).

3. BYU Law School, Mission and Goals of the J. Reuben Clark Law School <http://www.law2.byu.edu/mission_goals_learning_outcomes/missionandgoals.php> (accessed Dec. 19, 2008).

4. *U.S. v. Mitchell*, 377 F. Supp. 1326 (D.D.C. 1974), *aff'd sub nom. U.S. v. Nixon*, 418 U.S. 683 (1974).

5. *U.S. v. Nixon*, 418 U.S. 683 (1974).

6. *Judge John J. Sirica: Standing Firm for the Primacy of Law*, Time, Jan. 7, 1974 <<http://www.time.com/time/magazine/article/0,9171,910949-1,00.html>> (accessed December 19, 2008). The facts regarding the Watergate scandal cited in my remarks come from Wikipedia, *Watergate scandal* <http://en.wikipedia.org/wiki/Watergate_scandal> (accessed Dec. 19, 2008).

7. Quentin L. Cook, *Elder D. Todd Christofferson: Prepared to Serve the Lord*, *Ensign*, Aug. 2008, at 10, 14.

8. Dallin H. Oaks, *Address*, in *Addresses at the Opening Ceremony of the J. Reuben Clark Law School* (Aug. 27, 1973).

9. *Id.*

10. Joseph Smith, 5 *History of the Church of Jesus Christ of Latter-day Saints* 440-42 (1964 ed.).

11. 3 Nephi 11:29.

12. 3 Nephi 12:9.

13. Brigham Young, 16 *Journal of Discourses* 9 (1967 ed.).

14. Brigham Young, 12 *Journal of Discourses* 32 (1967 ed.).

15. William Shakespeare, *Hamlet*, Act 1, Scene 3, 75 (1603).

16. D&C 93:36.

17. D&C 130:18-19.

18. D&C 130:20-21.