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Unto Whom Much Is Given

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On behalf of my faculty colleagues as well as the rest of the administration and staff, I welcome you to BYU Law School. Among the many choices and opportunities you have had, I am convinced you have chosen well. We all consider it our duty to help ensure that your choice bears good fruit.

The theme for my remarks today will be a familiar one that I believe is applicable to all of us—students, faculty, administration, and staff. It comes from the book of Luke: "Unto whomsoever much is given, of him shall be much required: and to whom men have committed much, of him they will ask the more" (Luke 12:48; *see also* D&C 82:3).

All of us who gather today do so as the beneficiaries of the sacrifices and efforts of others. We all inherit a law school with a strong foundation and excellent reputation because of the efforts of so many students and faculty who have passed through our halls.

You are the beneficiaries of an incredibly low tuition because of the generosity and sacrifice of many, many members of the Church. In these economic times, that generosity is welcome because it will allow you to avoid incurring so much debt, particularly if you are careful with your expenses over the next three years. But in light of the economic times and the many competing uses for those funds, it makes the gift of the tithe payers all the more remarkable. This is particularly the case because the vast majority of them will not ever be able to partake of this gift themselves. Parents and spouses are also likely giving much—financially and emotionally—so that you can be here and succeed.

You have been given much not just by others but also by your Maker. This is a remarkably gifted class whose collective experience and knowledge will be a well from which I hope you will all drink deeply during your three years here. The truth is that one of the greatest gifts this law

school will give you is to introduce you to your classmates. In this group gathered today in this moot court room are those who I hope and expect will become your lifelong friends.

All of us are persons to whom much has been given. It is not cause for congratulation—although I can't help but pause and congratulate ourselves on putting together another such fantastic class—rather, it is cause for reflection and, ultimately, for sacrifice. There truly is much required of each one of us.

Now, I recognize that today, of all days, despite sterling academic credentials that place you among the top classes in the country, many of you probably do not feel like the person who has been given 10 talents. More likely, many are wondering whether they've been given enough talent for the task ahead. And if you are not wondering that today, you surely will over the next weeks and months as you are subjected to searching Socratic questioning or as you hear a classmate's response and think, Why didn't I see that? What am I missing?

Let me assure you that all of you have the capacity to succeed. You are those who have been given 10 talents. When you leave law school, you'll have even more. The question will be how you will use them.

But for now, as you embark on this endeavor, there may be times when you will be tempted to think that you lack the necessary ability. As a counterweight let me suggest a couple of areas in which it is important to have some perspective.

First, it is wise to remember that when we do something for the first time, it is almost always difficult. When you begin preparing for class, it may take you a couple of hours to read, brief, and understand a three- to four-page case. Even then, you will walk into class, thinking that you are surely prepared, only to find out that the issues and questions raised by the case run much deeper than you had imagined.

Think for the moment about a garden-variety torts case, a personal injury case, where an older gentleman—we'll call him Smith—was driving across an elevated causeway, lost control, hit a wooden guardrail, and plunged 100 feet to a severe injury, after which he sued the county that had constructed the bridge.

In preparing for class, you'll need to read and understand this basic plotline of facts, but that won't be enough. Nor will it be enough just to understand the legal issue and doctrine in the case: here, was the county's construction of the causeway and guardrail negligent, reasonable, and the cause of the injury?

In addition to the facts and the legal rule, you'll also need to think about the procedural posture of the case: should the court assume the allegations of Smith are true because it is the county who has moved to dismiss the case or vice versa?

You'll need to look at other cases and consider how this particular case fits with precedent and whether it is distinguishable in meaningful ways.

Likewise, you'll need to consider what a word like *reasonable* means. Think about how often each of us confidently asserts that a particular argument is "unreasonable" or a particular policy "unfair." Part of learning the law is learning to unpack such words and give them content and meaning.

In the causeway crash case, for example, is reasonableness defined simply by our quick intuitive judgment of what we think a county should do to make its roads safe? Is the answer an economic one—to look at the costs of installing stronger guard rails vs. the number of accidents prevented? Is the answer a look at custom? Does it matter how other counties and states are building guardrails? And for any potential rule adopted, what sort of social impacts will it create? Will counties respond by building better guardrails or building fewer roads? What is the best way to care for people, like Smith, who suffer severe injuries? Is it the judicial system or some form of social insurance? And for all of these questions, what is the relative role of courts, the legislature, and the executive branch in such decisions?

In the hands of superb faculty, this sort of dialogue and the complexity of class discussion will go much further and peel back many more layers than this quick peek at the issues.

At the beginning, the process may feel a bit excruciating, particularly if you are on the proverbial Socratic hot seat, but you will improve over time if you give it your best effort.

Everything takes longer when you begin. Experience tends to be a little painful and a little embarrassing. But the alternative is no growth.

I began law practice in September 1990 in Seattle, Washington, following a clerkship in San Diego. I had not yet taken a bar examination, mostly because when I headed off to do a clerkship I hadn't yet decided where I wanted to practice law, and I certainly wasn't eager to take the bar exam twice. What this meant was that from September until April or May of the next year, I would not be able to appear in court or sign any court pleadings. In all of my correspondence with opposing counsel, my signature read: "James R. Rasband, not yet admitted to the bar."

That fall, soon after I started, I was approached by a partner to handle an unlawful detainer case—an ideal opportunity for a young associate. The basic idea of an unlawful detainer is that a tenant who is in possession of a leased property refuses to pay rent or leave the premises. This particular case involved a western-wear store in Ellensburg, Washington, about 100 miles east of Seattle. As I recall, the tenant had not paid rent for a little more than a year, and the landlord decided he needed the help of the legal system.

These are very straightforward cases, but everything took me a great deal of time because I was so new. I puzzled over every step and would have preferred not to bill most of my time because much of it was wasted. The partner in charge, however, told me to write it down and that he would write off what was unnecessary once the case was resolved.

One early puzzle I remember was filing what is called a "motion to shorten time." Basically, a motion to shorten time—as the title suggests—is a request for the court to shorten the amount of time normally required for a particular legal procedure. I'd never heard of a motion to shorten time. I read the rules. I thought about the equity. I looked at cases. I thought about the theory. I can't recall precisely, but I probably spent five hours on that motion to shorten time. Later, I would learn that all I needed to do was dictate a quick note to my secretary and have her prepare the motion for my signature. It was probably a 10-minute task and certainly no more than 30 minutes.

The motion to shorten time was not the only task that took me more time than an experienced attorney. I was young and learning.

In any event, the case moved forward, and we succeeded. It was certainly not a triumph of brilliant lawyering on my part. It's not too difficult to prove unlawful detainer when the defendant failed to pay rent for at least a year on a commercial lease.

Once the case was over, the Washington statute under which we proceeded allowed us to seek attorneys' fees. The partner in charge told me to draft the motion and seek fees from the other side. Knowing how long everything had taken me, I was a bit queasy. We cut back the request some but plainly not enough, because I will never forget the response from opposing counsel.

Opposing counsel dissected the fee request and my billing statements line by line. The motion to shorten time, he said, could be prepared by a reasonably competent attorney in 30 minutes, but it took "James R. Rasband, not yet admitted to the bar," and he quoted, five hours. And so it went, this task or that task could have been performed by a reasonably competent attorney in one hour, but it took "James R. Rasband, not yet admitted to the bar," four hours.

By the time of the fee request, I had been admitted to the bar, much to the surprise of my opposing counsel. Unfortunately, that meant that I was fully capable of arguing the fee motion to the court. I headed over to Ellensburg to take my whipping. As luck would have it, the opposing counsel had filed his response brief late, and the court refused to consider it. The judge, who had done many, many unlawful detainer cases, assigned a reasonable fee, and we were done.

Here I was, after three years of law school and one year of a clerkship on the Ninth Circuit. I was still learning and still feeling inadequate. Now, the truth is that BYU does a much better job with teaching you some basics

of lawyering skills than I received. Nevertheless, you are likely to find your own versions of motions to shorten time. It's okay. In fact, it is necessary. Spend the time to get it right. Don't be worried or ashamed that your first effort takes longer. It almost always gets easier as you go.

Let me suggest a second counterweight to the almost inevitable feeling of lacking the necessary talent as you begin law school. Please keep in mind that lasting happiness and peace is not a function of comparing yourselves to others.

Last spring Elder Quentin L. Cook, who is a member of the Quorum of the Twelve Apostles of our sponsoring church, spoke at a fireside sponsored by the J. Reuben Clark Law Society, a society made up predominantly but not exclusively of LDS attorneys, which most of our graduates join in addition to the BYU Law School Alumni Association. Elder Cook, as most of you know, is an attorney, as are two of his three children—a daughter and a son, who is a graduate of our law school.

In one section of his address, Elder Cook suggested that too often our sense of happiness is derived from our perception of how we are doing vis-à-vis others. He told a story of how, years ago, he had been running a health care system and hired a consultant to help the company resolve some merger issues. The consultant had started by asking the group to list some of the skills that were important to what they needed to do, such as delegation, public speaking, working with others, etc. Elder Cook recalled listing out the various skills, at which point the consultant asked him to list individuals who he had met in his lifetime that were the very best in each area. Elder Cook related:

> As I recall, there were approximately 10 of these skills. He then listed them across the top of the whiteboard and asked me, using an A, B, C grade formulation, to identify how each of these superstars performed in the other nine areas. To my great amazement, I realized that no one got straight As across the board. Most had significant numbers of Bs, and many had some Cs.
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> The consultant then pointed out that what we often compare ourselves with the A+ performers in each category that we value, and then we feel inadequate and unsuccessful in what we are doing. . . .
>
> You might ask why I am sharing this with you. Law and the process of becoming a lawyer are very competitive. The respect for credentials can reach an inappropriate level where they are virtually "idols." . . . In the hothouse environment of the law, there are many people who are very skilled, and there is always somebody who seems to be better in all the ingredients that make up the qualifications to be a lawyer. Notwithstanding these issues, I would ask, "Do we have to be an A in everything to be happy?" ["Latter-day Saint Lawyers and the Public Square," *Clark Memorandum,* fall 2009, 7]

Elder Cook went on to suggest that our position vis-à-vis others cannot be the source of happiness. It is ephemeral, and we will always find

some character or attribute in which another person appears to be scoring higher. It is our own best effort that must be the source of peace.

I have always thought of learning the law as being something like learning a foreign language. For some, learning the language may come easily. It just clicks. For others, is comes with great difficulty. But for all who are willing to work hard at it, it comes.

To this I would add that the categories of legal skills upon which law school tends to focus are just a part of the broader equation of being a lawyer. Just like speaking a language doesn't make the missionary, knowing the law isn't enough to make the lawyer. It's what you do with the language or what you do with the law that matters.

Whether you are someone for whom the language of the law comes quickly or one for whom it comes at a more regular pace, look for ways to help others. Learning is a gift that ought to be shared. It is the paradox of charity that the giver benefits more than does the receiver. This is certainly true in education. Those of us who have taught know this best. There is no better way to learn something than to teach it. As you work to help classmates—in study groups, in carrels, and elsewhere—your own legal skills will develop even faster. By help, I do not mean just spending time to explore the permutations of any particular legal doctrine. I mean also taking the time to comfort during times of stress or sorrow and taking the time to broaden your social circle. These too are lawyering skills.

Although I want you to have some perspective at what is likely a time of uncertainty, my primary goal is that we recognize how much we have been given and ask what should be required of this group of students and this law school to whom so much has been given by those with so much less. Let me suggest a few ways in which we can exemplify our recognition of this blessing.

First, I suggest that as you learn the skills of analyzing, taking apart, and making arguments that are the staple of a legal education, you remember how critical it is to deploy those skills with charity and civility.

Charity may seem easy today, particularly where the primary concern may be a faculty member dissecting your argument. But soon, perhaps too soon, it may not be. Experience suggests that the humility may start to wear off for some as we move further into the semester. Former dean Reese Hansen, when he spoke to the entering class, sometimes recalled, "It is often said that the boorish behavior of first-year law students has ruined more Thanksgiving Day family dinners than any other single factor."

I always nervously chuckled at Dean Hansen's remarks, knowing that I myself had spoiled the occasional dinner because I just couldn't resist taking out my shiny Socratic pin and popping someone's balloon.

I am not suggesting that we do not stand up for our principles or that we refrain from advocating causes about which we are passionate. Instead,

what I hope is that as you study the law, one of the lessons you internalize is the importance of what I would call charitable disagreement.

At a basic level, charitable disagreement should take the form of civility. The study of law is the study of the rules that regulate human behavior. Because you come from different backgrounds and have had different experiences, it is likely—indeed certain—that you will not see eye to eye with all of your classmates about what rules are best for ordering society. I hope that what that leads to in your classrooms is robust debate. It is out of such debate that real learning comes. Feel free to disagree vigorously and to disagree often, but to disagree respectfully.

Professor Brett Scharffs once told me that his mother used to say that if you find yourself disagreeing, and I paraphrase from memory, "there is no need to shout or get angry. If you are right, you don't need to. And if you are wrong, you don't want to."

The law is an adversarial profession, but it works best and is most ennobling and satisfying when it is practiced with respect for opposing counsel and opposing clients. The best place to practice those traits before you enter the workplace will be in your classrooms here at the Law School.

Civility is, in some measure, a lesser law. When I speak of the importance of charitable disagreement, my hope is that we do more than simply be civil. Instead, I hope you will learn to dispute with real concern and care for those with whom you disagree. I hope you will listen, really listen, to your classmates and work to understand their arguments and positions in a charitable light. When you attempt to see another's position charitably, they often reciprocate.

This is not just a function of Christian kindness. It is also good lawyering. When you understand another's views in their best light, you will be better able to evaluate the wisdom and strength of your own, or your client's, position. It is neither charitable nor wise to assume that because a classmate disagrees he is misinformed, unreasonable, or unthinking. In law practice, whether in dealmaking or in litigation, once you understand the concerns animating the other side, it is much easier to find an acceptable resolution. Even if you can't find a solution, you will better understand the nature of a just resolution to the dispute.

Your education to this point, and the skills of careful analysis and critical thinking that we hope you will hone during law school, will give you significant power and influence in society, indeed, in almost any group of which you are a part. As dean of this law school, that is precisely what I want. I want you to be influential leaders. But as you wield your influence, remember that worthy influence can be maintained only "by persuasion, by long-suffering, by gentleness and meekness, and by love unfeigned" (D&C 121:41).

Let me now suggest a second expectation where so much has been given. It is the expectation that we work hard to take advantage of our

blessings and then to make them available to others. Hard work is a lifelong way to give back a little of what we have been given. This isn't just work at the office, it is work in the community, in your church, and in your home.

Later this fall we intend to give each of you a DVD documentary about the life of J. Reuben Clark Jr., after whom this law school was named. President Clark, of course, was a former member of the First Presidency of the Church, a former ambassador to Mexico, and a former undersecretary of state. Before all of that he grew up on a farm in Granstville, Utah. One of my favorite passages in the DVD quotes three diary entries from President Clark's father describing his 12-year-old son, Reuben:

> Monday
> A very stormy morning. Snowing and the wind blowing from the north. Snow drifting. We advised the children not to go to school. Reuben thought he could stand it and so went. Edwin and Elmer remained at home.
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> Tuesday
> A bitter cold morning. I think we are now having the coldest weather that I have ever experienced in the month of February. The boys started to go to school this morning but it was so cold and stormy that we called two of them back. Reuben had got out of hearing. Edwin and Elmer remained at home.
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> Wednesday
> The weather was extremely cold last night and this morning. . . . We thought it was too cold to send Edwin and Elmer to school today, but Reuben would rather miss his meals than to miss a day from school. He is getting along well with his studies. [David H. Yarn Jr., *Young Reuben: The Early Life of J. Reuben Clark, Jr.* (Provo, Utah: Brigham Young University Press, 1973), 51–52]

My hope is that this same sort of passion can energize our entire learning community at the Law School. When you finish here, I hope you will have a lifelong passion for learning. The truth is that the critical and analytical thinking skills that we teach in law school are only the beginning of real learning, because they are the tools with which you will read, study, and learn for the remainder of your life.

What I also hope that you develop or, more properly, retain—because most of you already possess this in abundance—is the capacity to work until the task is done. Let it be said of BYU graduates that they always do their share and more. Certainly, save time for your family and friends. Relationships are more important than prominence in the workplace. Nevertheless, integrity demands that you give a full measure of effort in your employment. The gifts you have been given demand that you give much of yourself.

Let me take just a moment on another expectation that flows from the privilege and status afforded a lawyer—namely, the expectation of integrity. You have probably heard the term before that a lawyer is "an officer

of the court." This means that a lawyer owes a duty not just to her client but also to the court. A lawyer has a duty to the public to ensure that judicial proceedings are fair. More broadly, a lawyer has a duty to place professional standards and integrity ahead of any individual or client advantage.

Integrity is also something that goes to the very heart of what an academic institution, and particularly a law school, does. At the end of your time at law school, you are not paid. What you receive instead is a "credential." Think about that word. It comes from the Latin word *credentia,* which means "trust." The dictionary defines the word *credential* as "that which entitles one to confidence, credit, or authority." In essence, what the Law School certifies to the world upon your graduation is that you are entitled to the confidence, credit, and trust of your clients.

As you begin law school, recognize that many of you will be under the greatest academic pressure in your life. The workload is significant. Being graded on a curve alongside so many hardworking and accomplished classmates can be stressful. The deadlines in law school are typically firmer than in your prior academic work. With all of these pressures, the temptation to cut corners in law school can be great. Please remember that no temporary success on a paper or an exam is worth the price of your integrity.

Let me mention a final duty that accompanies our privileged status: the obligation to serve those who are less fortunate. Law—along with medicine and the clergy—is one of the three original professions. As traditionally understood, members of a profession were held to a specific code of ethics and required to swear some form of oath to uphold those ethics, thereby "professing" to a higher standard of accountability. The essence of being a genuine professional, whether a doctor or a lawyer, was the expectation that a professional would use her privileged position and her specialized knowledge for all who required it and not simply for personal advantage.

This is why the Rules of Professional Conduct provide that "[e]very lawyer has a professional responsibility to provide legal services to those unable to pay" (Model Rule 6.1). Helping the less fortunate is part of the compact between lawyers and society. This service obligation, along with the obligation of ethical conduct, is what undergirds the unique and privileged position of lawyers. Thus far, states and the public have largely allowed state bars (in other words, groups of lawyers) to regulate who is able to practice law and what rules govern a lawyer's conduct. This privilege brings corresponding duties.

These days it seems as though every job is labeled a profession, partly, I imagine, because of the historical connotation of privilege and authority associated with the professional label. At the same time, the understanding of law as one of the original noble professions seems to be dissipating. To fight the former would seem to be a misplaced focus on retaining a privi-

leged position in the hierarchy of job categories. But we must not give in to the latter trend of law drifting from its noble professional moorings. How powerful it would be if every BYU student and graduate took seriously the traditional professional label, working diligently to obtain knowledge and skills worthy of the title and then sharing those skills with integrity and a felt obligation to give back for what we have all been given. Let it not be on our watch that the professional label is further drained of its content.

I'd like to conclude by quoting two speakers who spoke to the very first Law School class when the Law School was founded. Their challenge rings down through the years and is no less compelling today than it was 36 years ago.

Speaking to the Law School's charter class, President Marion G. Romney, then a counselor in the First Presidency of the Church, said:

> You have been admitted for your superior qualifications. Appreciate your opportunities; make the best of them. Set a high standard for your successors to emulate. You know why you are here, what your school, the Board of Trustees, your own loved ones, and yes, your Father in Heaven expect of you. Don't let any of them nor yourselves down. . . . Be your best. Society needs you, your country needs you, the world needs you.

At the same meeting, Dallin H. Oaks, then university president and now apostle, added: "We are privileged to participate in this great venture. It is our duty to make it great. He who builds anything unto the Lord must build in quality and flinch at no sacrifice toward that end."

To their words of challenge, I add my words of welcome. I and my colleagues are excited that you have decided to join us at the Law School, and we are eager to begin with you the ennobling adventure of learning and then practicing law.

This address was given to entering law students at BYU *Law School on August 19, 2009. Reprinted from the* Clark Memorandum, *spring 2010, 26–31.*

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