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A Tribute to J. Timothy Philipps

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The Washington and Lee Law Review *dedicates this issue to Professor J Timothy Philipps. After being diagnosed with cancer earlier this year, Professor Philipps retired from the Washington and Lee School of Law Although we cannot hope to do justice to Professor Philipps's impressive career and achievements, we hope that the next few pages will convey a little of what Timmy Tax means to all of us.*

Denis J Brion*

A short while ago, when I called the attention of a colleague to an article from the current issue of a news magazine, his reaction was generally favorable. He noted, however, his irritation at the author's use of the word "quotidian." Given the subject of the article, its intended audience, and the author's general style, his use of this particular word, when "daily" would have been entirely appropriate, struck my colleague as being affected to the point of pomposity What is poetry, after all, but a densely packed array of appropriate words?

What, however, is this matter of appropriateness? Is it a quality of words themselves? Or is it a consequence of the way in which we use

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words? "Daily," for example, connotes the mundane. Indeed, it is this connotation of mundaneness that no doubt lies at the root of my colleague's irritation at the use of "quotidian."

Surely, the enterprise at hand, paying tribute to another colleague—Timothy Philipps—is not a mundane matter. Surely, also, the circumstances that have given rise to the occasion which calls for tribute are not a mundane matter. And it is especially obvious that the grace and determination with which Tim has responded to those circumstances amount to something far more than the mundane; rather, they amount to nothing less than the essence of courage.

And yet, if you reflect on the whole of Tim's life, you realize that he has been no dashing warrior heroically serving grandly prominent causes, no rolling voice from the stage generating awe in the audience, no stylish figure on the field thrilling spectators with graceful elan. In the grand scheme of things, his daily life has been, well, mundane. He has had a profession, and a career, and a family He has had his small failures, and he has had his small successes—as the large world measures such matters. And he surely has had his challenges, which he has doggedly faced and grittily overcome. And he has carried off all of this—the successes, the failures, the good, and the bad—with unfailing humor and spirit.

What emerges, however, from this mundane role that he seems to have played is that the playing of it has been underlain by a deep commitment to strong values. Tim has not simply had a family; he has participated in the creation of a community of love. He has not simply practiced a profession; he has honored it with an unfailing commitment to its principles. He has not simply had a career; he is a teacher—a *rabbi*—who has devoted himself to the care of his students, to the deepest nurture of their professional competence, their moral sense, and their humanity Tim has not simply played a role. Rather, he has created a role. And in his deep devotion to uncompromising values, he has played this role remarkably

What is even more remarkable is that, beyond his students, the depth of Tim's commitment to his values has been a well-kept secret. His infectious humor, his vitality, his rapport with his students are his hallmarks. His values, and his commitment to them, however, have seldom been acknowledged, have rarely been celebrated, and often enough have clashed with more prevailing values.

And yet his life has been a succession of days in which he has cherished his values, sharpened them, and deepened his commitment to them. And given the very circumstances of that succession of days, his commitment to his values has been nothing other than a daily act of quiet

courage. It is, then, no accident, nor, to tell the truth, the least bit remarkable that his journey on this latest path of his life has been marked with conspicuous courage, given the quiet courage—far the more difficult kind—that has marked all the previous paths of his life.

What must be clear, after all, is that there is nothing pompous about the word "quotidian," or any other word, of itself. Whether it is pompous, or appropriate, or even graceful, depends entirely on the setting in which it appears—it depends on how it is put to use in the particular instance.

If you consider the ongoing succession of days that comprises Tim's life, you cannot understand it as anything other than an ongoing act of courage, and an acting out of the most difficult kind of courage—not the rising to grand occasions but instead the daily refusal to be defeated by the abrasive succession of mundane occasions. Tim's courage has not thereby been rendered mundane by the occasions to which he has responded. Just the opposite—their very mundaneness has exalted what he has done. And that exaltedness constitutes a setting in which the word "daily" is inappropriate—it works to trivialize rather than recognize, to note in passing rather than to honor, his courage. Quotidian, in reference to the mundane, is pompous. Quotidian, in reference to the exalted, works to recognize justly and to celebrate. Tim's courage is quotidian.

William S. Geimer*

Don't Get Above Your Raisin'
— Ricky Skaggs

Our brother, Tim Philipps, did not get above his raisin' For this, he is honored and loved.

Tim has inspired us all by his unique, student-oriented approach to legal education. In the course of becoming a recognized tax law authority and publishing numerous scholarly articles, he has never lost sight of why he is here and has done his best to see that we don't lose sight either. He has tirelessly promoted the unorthodox notion that law students should look back on their experience as an enjoyable period, one not only where their

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knowledge was increased, but where their lives were enriched. There is considerable evidence that graduates of many highly regarded law schools certainly do not view their three years in that light. The fact that so many of our alumni do is in no small part due to Tim's influence on the school.

On this issue, Tim has been a great inspiration to me personally, especially as the years have passed. All new faculty are student-oriented. But in time, other factors come into play that can almost imperceptibly push students into the background. Recognition in the profession, scholarly interests, fascination with the minutiae of one's field of law—all can siphon off time and attention that should be paid to students by experienced faculty By persistence, good humor, and personal example, Tim has helped shape an approach to legal education at W&L that helps us all combat those temptations.

How did it come to be that Professor J Timothy Philipps, bona fide academic, has for so long been a major force in so many of the things that are done right at this law school? In a school where all of the faculty make it a point to be accessible and concerned with student welfare, why does Tim stand out? I think I know something of the answer, and I don't think Tim would mind if I revealed it. Part of the reason Tim never forgets where he came from has to do with where he came from—a decidedly non-academic, working class, West Virginia background. Part of the reason also is that Tim got into a lot of trouble as a very young man, and could have gotten into a great deal more. Like so many people I have dealt with in my field of law, there came a time when either someone would recognize Tim's enormous talent and potential, or he would be ignored. To the everlasting benefit of all of us and of thousands of law students, a few people did see, and they had a positive effect on Tim's life. So, instead of the possibility of jail or a coal mine or a steel mill, it was Georgetown, Harvard, and the rest is, as they say, history

Many people who are as fortunate as Tim was lose sight of the blessing. In time, they come to believe that they are sort of entitled to everything they have achieved. They get above their raisin' But Tim is not many people. He is an extraordinarily decent human being. And so has paid back—tenfold. He became the positive force in the lives of many of his students, just as others had taken the time to influence his life. Even while battling alcoholism, he was a devoted and loving father to two remarkable daughters, who returned that devotion during the dark days and rejoiced even more with him when the battle was won. As Tim will readily admit, this concern for students and family was nurtured and directed by a truly extraordinary woman, his wife Sandy

Taking the journey that Tim has taken, and somehow not forgetting, has also made him an implacable foe of academic pretentiousness, both institutional and individual. Though we have often had different visions over the years of what this law school should be doing and where it should be going, on that point we have stood united. He is irreplaceable as an ally in that fight, and I shall sorely miss him.

I told the law review editors initially that I would probably write only a couple of paragraphs. That was my intention. Now I want to write on, as if by doing so I could eventually find a way to communicate to readers what this good man has meant to me and to all of us. But that, of course, is futile. So thanks, Tim. We both got here in 1980. The country lawyer from East Tennessee State is most grateful to the vertically challenged hillbilly for guiding him into the strange world of academe, and for helping sort out what is important and what is not. Though many might look at your tremendous accomplishments, at where you are compared to where you started out, and want to praise you for getting above your raisin', they don't really understand. I want to thank you for *not* doing so. Have a safe trip.

Your friend,

Bill Geimer

Thomas R. Goodwin*

> [F]or the things which are seen are temporal, but the things which are not seen are eternal.
>
> — II Corinthians 4:18

What seems only a moment ago, but is in reality a quarter century past, I was fortunate to be one of Professor J Timothy Philipps's first law students. At West Virginia University School of Law, I was a student in Professor Philipps's legal philosophy and taxation classes. During these

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courses, he elevated teaching to a different level. I well remember him coming to class laden with books, notebooks, notes, and regulations. His example of thorough preparation and complete mastery of the subject matter could have been intimidating. Instead, he had the rare ability to lift up students to his own standards of excellence. Professor Philipps was able to convey a desire to learn and, by his own example, to challenge students to achieve excellence in their academic pursuits. Throughout my own studies, which included an LL.M. at Harvard Law School, Professor Philipps was, without doubt, the best professor I ever experienced.

Professor Philipps's influence extended far beyond the classroom. At West Virginia University, he was an enthusiastic participant in student life and athletic activities. After spending his day discussing subjects as technical as the recapture of depreciation, Professor Philipps would play a game of intramural softball with all-out abandon. I once remember him screaming all the way to first base in an attempt to keep the first baseman from catching the ball! Through such antics, he conveyed the sense that one can be a brilliant lawyer and an outstanding professor and, at the same time, maintain one's youthful enthusiasm and zest for life. This message was comforting to men and women facing the harrowing transition from youth and the world of academia to adulthood and the demands of the legal profession. Professor Philipps was proof that one could successfully make this transition, and both he and his students rejoiced in it.

It has been said that if you want to know what other people think of you, run for office and let people vote by secret ballot. Similarly, law professors who subject themselves to the brutal student evaluation process quickly find out what their students think of them. In this process, Professor Philipps emerged a clear winner. At the law schools where he taught, his classes filled up within moments of the schedules being issued. Indeed, students would rearrange their entire schedules in order to take taxation classes from Professor Philipps. He has been voted Professor of the Year by many classes, beginning with mine, and has received the highest recognition and honors that can be bestowed upon a law professor by his students.

Largely because of my esteem for Professor Philipps, I encouraged my own daughter to attend law school at Washington and Lee. I deeply regret that due to Professor Philipps's illness, she will not have the opportunity to experience the unique perspective he brings to the study of law I also regret waiting twenty-five years to convey my gratitude to Professor Philipps for his influence on my life and career.

Professor Philipps chose to spend his life pursuing academic excellence, inspiring his students to achieve higher levels of learning and relating to all people in his youthful and engaging manner. The students who experienced "Timmy Tax" were truly changed.

To all of us, Professor Philipps will remain ageless—a refreshing combination of a brilliant law professor and a child at play His life will continue to influence us as we pursue our own careers. We will always be grateful.

Roger D Groot*

Tim Philipps has been my colleague for fifteen years. Because we have often disagreed (almost always on the application of the principle while agreeing on the principle), we have had a number of opportunities to kiss and make up. I treasure those events because they provided a vehicle for me to tell Tim, however much I disagreed with him, how profoundly I respect him.

My respect for Tim is based on his candor and his devotion to teaching. First, Tim has always stated his views openly; his colleagues know exactly where he stands and why One may disagree, but one knows where and what the disagreement is.

Second, Tim is devoted to his craft and his students. Tim understands teaching to be far more than appearing at the appointed time and place prepared to present assigned material. He perceives teaching to include mentoring, tutoring, discussion and friendship. Tim's door truly has been always open to any student, enrolled in his class or not, who needed him. In many ways, the best ways, Tim Philipps defines the teaching role at Washington and Lee.

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Ed R. Haden*

The tremendous positive impact that Professor J Timothy Philipps has on the students who attend the Washington and Lee University School of Law is clearly evidenced in his roles as scholar, teacher, and mentor. Professor Philipps's students take great pride in the wealth of scholarly articles that he has produced since he began teaching in 1966, spanning a broad array of topics from corporate restructurings[1] to the standards governing positions on tax returns[2] to the tax ramifications of educational assistance for students.[3]

In addition to the academic excellence that his body of scholarship exemplifies, Professor Philipps's articles provide a glimpse of his philosophy of life. Professor Philipps believes in people who sacrifice for their children, go to church, and love their country, i.e., hard working, tax-paying, God-fearing Americans. Whether advancing educational assistance for the middle class or preventing the government from taxing the fruits of peoples' labor away from them, Professor Philipps consistently focuses on people, especially his students. This focus became apparent to all of his students when Professor Philipps played the key role in organizing a symposium entitled "Tax Policy as the Twenty-First Century Approaches" at Washington and Lee.[4] By using his reputation and contacts, Professor Philipps brought a scholarly discussion of the tax law to his students at a

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1. J. Timothy Philipps & J. Raymond Kelley, *Waiver of Attribution Rules in Internal Revenue Code Section 302 Redemptions From Estates*, 5 J. CORP. L. 241 (1980); J. Timothy Philipps & Gregg D. Hackethal, *Use of Internal Revenue Code Section 355 to Separate Shareholder Interests in Cross-Ownership Situations*, 11 LOY. L.A. L. REV 757 (1978); J. Timothy Philipps, *Deductibility of Legal Expenses Incurred in Corporate Stock Redemptions, Partial Liquidations, and Separations*, 1976 DUKE L.J. 941.

2. J. Timothy Philipps et al., *What Part of RPOS Don't You Understand? An Update and Survey of Standards for Tax Return Positions*, 51 WASH. & LEE L. REV 1163 (1994); J. Timothy Philipps, *It's Not Easy Being Easy: Advising Tax Return Positions*, 50 WASH. & LEE L. REV 589 (1993).

3. J. Timothy Philipps & Ed R. Haden, *It's Not Love, But It's Not Bad: A Response to Critics of Prepaid College Tuition Plans*, 26 U. RICH. L. REV 281 (1992); J. Timothy Philipps & Timothy G. Hatfield, *Uncle Sam Gets the Goldmine—Students Get the Shaft: Federal Tax Treatment of Student Loan Indebtedness*, 15 SETON HALL LEGIS. J. 249 (1991); J. Timothy Philipps, *Federal Taxation of Prepaid College Tuition Plans*, 47 WASH. & LEE L. REV 291 (1990).

4. *See* Symposium, *Tax Policy as the Twenty-First Century Approaches*, 50 WASH. & LEE L. REV 439 (1993).

pivotal point in history—just as Congress was considering the Clinton administration's proposed legislation. Thus, Professor Philipps's role as scholar leapt from the pages of the law reviews into the live arena of debate in which his students enthusiastically participated.

Professor Philipps's scholarship comes into true fruition in the classroom where he exemplifies the consummate professional. In teaching individual, corporate, and partnership taxation, Professor Philipps's dedication and talent make his classes more of a dynamic interchange than a dry lecture on the byzantine intricacies of the Internal Revenue Code. Armed with well-prepared materials, Professor Philipps enlists his students in a phenomenal give-and-take performance that makes tax law as exciting as it is complex. A consistent string of these classroom successes brought Professor Philipps the highest honor which his students can bestow· The Student Bar Association's Outstanding Professor Award.

Professor Philipps's humanity is also evident, if not preeminent, in his teaching. In class, he opens the day with his favorite country music song titles: "This Honky Tonk Heaven Really Makes Me Feel Like Hell", "It's Gonna Take a Month of Sundays to Get Over Saturday Night"; "Don't Come Home a Drinkin' with Lovin' on Your Mind"; and "If You Want to Keep the Beer Cold, Put It Next to My Ex-Wife's Heart." Professor Philipps hosts "Bowling Night" and the annual "Papal Pic Nic" at which the Pope, looking somewhat like a tax professor wearing a sheet and a funny hat, appears at random to bless the throngs of whatever faith. Thus, Professor Philipps enters the hearts as well as the minds of his students as they prepare for the future.

Professor Philipps's professionalism continues after class as he uses his experience and contacts to serve as a mentor to his students to help them make the most of their degrees and their lives. Hours of informal counseling by Professor Philipps helped scores of students learn how to approach interviews and jobs. To help relax students for interviews and prepare them for the rigors of the legal profession, Professor Philipps recounts the story of his interview with a law firm when he was a third-year student at the Georgetown University Law Center.

> After a night of revelry, I awoke shortly before my interview was scheduled. Dashing downstairs, I pumped some change into a beverage machine, grabbed the resulting cup of hot chocolate, and gulped it down as I rushed for the door. Arriving at the law firm as the clock struck nine o'clock, I was met by a kind lawyer. Over the course of several hours, I met with a number of lawyers and discussed various aspects of law school and practice. Finally, the interview was over, and I was

> drained. I walked over to a drug store to obtain something to eat. After ordering a sandwich, I looked at the columns next to the counter where I was sitting. The columns were covered in mirrors. The mirrors held the unmistakable image of Tim Philipps with a big dot of hot chocolate on his nose. Yet I still received a job offer from the firm!

Later in the semester, when students are wondering what a firm will expect of them during a summer clerkship, Professor Philipps tells the following joke.

> A man had a near death experience while on an operating table in July As a sinner, he went to Hell. In Hell, everyone was drinking, dancing, and having a big party When the doctors revived him, the man enthusiastically lived a life of sin undaunted by the prospect of eternal consequences. Finally, when the man arrived at Hell on a permanent basis, everyone was moaning and groaning amidst the fire and brim stone. The man asked Satan why everything had changed since his last visit. Satan replied, "Oh, that was our summer associate program."

The inhibitions subside with the laughter.

Professor Philipps's mentoring does not stop with humor in the classroom—it extends to the humanity he displays at home. On innumerable occasions, Professor Philipps invites students for dinner at his home. After following Professor Philipps around his tomato and corn patch, a student would find himself sitting at a table with Professor Philipps and his charming wife and daughters. After an evening of food, conversation, and a comment or two about his future, the student would drive back to his apartment refreshed and ready to study, to work, and to make a future for himself.

Gwen T Handelman*

The Soul of the Law,[1] an inquiry into the spiritual health of the legal profession, finds that "[l]aw and lawyers have become abstracted from the world of actual experience" and that both suffer as a result. The book

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1. BENJAMIN SELLS, THE SOUL OF THE LAW (1994).

speaks of the sterile rationality of legal education "that disconnects people from the life they had before law school."

Tim Philipps has kept the law and lawyers connected to life experience. Bill Geimer notes that Tim has never forgotten his West Virginia working-class origins. This has shaped Tim's anything-but-sterile relationships with students and his impatience with the role of detached academic. The firm grasp that Tim has maintained on the realities of the lives of working people has invigorated the law in our chosen field of federal income taxation and infused it with new meaning, not only for his students, but for me.

A reviewer of *The Soul of the Law* observes that students "enter law school with words on their lips like 'truth,' 'fairness,' and 'justice', by the time they leave, they speak of 'due process and balancing tests,' 'plaintiff and defendant,' 'appellant and appellee.'"[2] For tax lawyers, the words may be "horizontal and vertical equity " Fine words, noble concepts, but empty unless injected with human experience, not just an economist's logic.

For Tim, tax is about people: their daily lives, their hopes, their foibles. Tim zeroes in on what makes practical sense in actual life—and he dismisses the nonsensical, no matter how theoretically correct. The product of a Jesuit education, Tim can engage in dizzying logic with the best of them. He certainly believes that economic theory has a place in the academy and government. But he also knows its proper place in the application of a tax to real people.

Grand theoretical constructs of "what is income" do not always reflect the life experience of people with limited economic choices. Tim is not impressed by the pronouncements of any policymaking elite viewing the lives of working people from a distance, and he has ever been ready to announce that the Emperor has no clothes. For that I know that I am especially indebted to him.

Thank you, Tim, for reminding us that the life of the law is life.

2. Paul Reidinger, *In Touch With Life*, A.B.A. J., Aug. 1994, at 94, 94.

Allan P Ides*

My first encounter with Tim Philipps occurred when I was a student at Loyola Law School in Los Angeles. Tim taught federal income tax and I was enrolled in his course. Being a liberal arts major, I had the normal phobias about taking a tax class and I entertained the typical stereotypes one might have of a tax professor—stuffy, boring, a numbers cruncher, etc. After one or two class sessions with Tim, however, the phobias disappeared and my stereotypes were demolished. Of course, now I know that tax professors are, on the whole, an exciting and vivacious sort; I truly regret my earlier misconceptions. In any event, federal income tax, at least federal income tax Philipps-style, was challenging and fun, and Tiny Tim, as we called him, was not very much like anyone we had encountered on the mean streets of L.A., much less like our expectations of a tax professor.

First, there was the laugh. You all know what I'm talking about. The high-pitched, body-quaking paroxysms of eruptive joy bursting out at regular intervals something like Old Faithful, only with greater frequency Half the time we had no idea what Tim was laughing about, but apparently something he had said struck him as particularly funny So we usually laughed too. Ask me about the Pierre jokes. Actually we often found ourselves with tears running down our cheeks as we chortled and guffawed our way through some arcane section of the tax code. Strangely enough, we seemed to learn the stuff and enjoy it at the same time.

Then there was the spittoon in his office. Not a decorative spittoon and not a spittoon used for a potted plant, but a sure enough real brass spittoon with wet, brown drippings mottled on its side and in its path. Remember this is L.A. I don't think most of us had ever heard of a spittoon, and if we had, we surely didn't think someone would actually spit in one. And yet here is this professor from West By-God Virginia sitting at his desk with a chaw behind his lip and a brass target on the floor. You had to pay attention while you were sitting in his office.

And he would talk to us, freely and openly About tax, about law, about life, whatever. He was frank and funny and thoroughly engaging. He was also considered one of the best teachers in a school of truly excellent teachers.

But Tim tired of the freeways and the smog, and he and his family moved to Lexington, Virginia. There he fell in love with Washington and

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Lee University and quickly became one of the most beloved members of the faculty Tim's love for his students and their return of that love stand as a testament to the intrinsic value of our profession. Throughout his teaching career he has remained steadfast in his belief that students come first and that the primary function of a teacher is to teach. While others pay lip service to this idea, Tim lived it.

Several years later Tim lured me to Washington and Lee and we became colleagues and very close friends. He'd given up chewing and taken to imitating the Pope, but other than that Tim remained as I remembered him—jovial, convivial, and a friend and teacher to his students. Most importantly, however, Tim became my friend, loyal and true. He even tried to teach me how to play basketball. And it is Tim's friendship that I cherish the most. But there is still the question of those bow ties.

Frederic Lee Kirgis, Jr *

I am proud to have had something to do with recruiting Tim Philipps to join the Washington and Lee faculty In the 1979-1980 academic year, I chaired the Faculty Appointments Committee. We knew we needed a tax teacher, so we began a nationwide search for one. Among other things, we placed an announcement in a bulletin published by the Association of American Law Schools and sent to all member schools.

Our announcement caught Tim's eye as he sat in his office at the Loyola Law School in Los Angeles, where Tim was then a Professor. He contacted us, saying that he had some interest in exploring a possible position here. We were impressed with his credentials, so I called him to explore a possible visiting position with the prospect that it could turn into something permanent. He told me of his West Virginia upbringing and of his wish to return to this part of the country We checked him out and discovered what all Washington and Lee law students came to know—that he was a very successful and popular tax teacher. We invited him, he came in 1980, he stayed, and our students have been the beneficiaries of our good luck in finding him.

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Later, during my stint as Dean of the law school, I discovered that Tim's prowess in the classroom could create a bit of a headache for the Dean. So many students wanted to take his section of the basic tax course that we simply could not accommodate them all. I would receive petitions or visits from groups of disappointed students who had been put on the waiting list for Tim's section. They knew perfectly well that nobody who had gotten into the section would drop it, so to be on the waiting list was to be told that you could only hope for better luck next year (if, of course, you were a second-year student, so there would be a next year). Sometimes, without letting the fire marshal in on it, we fudged a bit on the capacity of our 75-seat classrooms to accommodate a few extra students from the waiting list.

Tim never disappoints his audiences. He knows tax law, and he knows how to convey it to students with plenty of verve and humor. He loves to teach, and it shows.

Tim has another attribute known to practically all of us at Washington and Lee. For him, this is the consummate law school. He believes with all his heart in the values this school has traditionally held dear: honor and the dedication to honesty that comes with it; openness in relations with people within and outside the law school; and a dedication on the part of the faculty to teaching and to the best interests of students. If these things make Washington and Lee a special place, as I believe they do, they also make Tim Philipps a special person.

Andrew W McThenia, Jr.*

> For as by a man came death, by a man has come also the resurrection of the dead.
> For as in Adam all die, so also in Christ shall all be made alive.
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> — I Corinthians 15:21-22

Tim my colleague, friend, and teacher is sick and may be dying.

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I need to acknowledge in some way what his life means to me. But even more important I need to say something so as not to surrender to the chaos of death. Somehow I know we cannot be silent. Finally we must mock the chaos.

Of all the worldly powers, death is the most obvious, but it is not the last word. The last word is not death, nor life after death; the last word is the same as the first. And that word is Jesus Christ. He has, holds, and exercises power even over death in this world. And His promise is that a person may be set free from bondage to death in this life here and now

And Tim has claimed that promise. He is free of the bondage of death. His life is a song which mocks the chaos.

We have been together in this place since 1980. I thought initially that I would attempt to pull up some thoughts of our life together in the law school over that time. While there are many memories to treasure, and I do treasure them; colleague and friendship stories give way to the overwhelming reality of Tim as teacher. Not as a teacher of law students about the Byzantine nature of the Internal Revenue Code. But as my teacher.

He is teaching me so much about living and dying.

Recently there was a most wonderful gathering of family, friends, former students, and colleagues all of whom came together to express their love for Tim. In reality many of us had an additional reason for coming. We were searching for a teacher to help us come to grips with the power of death. We were searching for understanding. We were near despair; many of us asking WHY questions.

And Tim did what all great teachers do. He turned the questions around. Instead of worrying about death, he celebrated life. Rather than surrender to darkness, he laughed and brought light to the world. A friend and former student who was in near despair asked me somewhat bitterly: "How can you believe in the resurrection when someone so beautiful and vital as Tim is stricken?"

But finally to be present in that place, to see Tim wearing a funny hat made of balloons, talking about country music, and stretching the truth about his basketball exploits is the ultimate proof of the resurrection.

I want to close this meditation with an offering from the *Book of Common Prayer*

> This is another day, O Lord. I know not what it will bring forth, but make me ready, Lord, for whatever it may be. If I am to stand up, help me to stand bravely If I am to sit still, help me to sit quietly If I am to lie low, help me to do it patiently And if I am to do nothing, let me

do it gallantly Make these words more than words, and give me the Spirit of Jesus. Amen.

Thank you Tim for living so gallantly Thank you for making these words more than words. You make them flesh. Thank you for being a witness to the resurrection. And thank you for being my teacher.

Peace

Uncas

Brian C. Murchison*

When I arrived at Washington and Lee in the summer of 1982, I had little awareness of what it meant to be a law professor and still less about what it meant to be a teacher at this law school. All I knew was that, for better or worse, I had left a good job at a law firm in Washington, D C., and had brought my wife and two-year-old son to a small Shenandoah Valley town for a different sort of life. We were expecting our second child. It was a liberating time for us, but also one fraught with doubts. Had we taken the right turn?

When I met Tim Philipps, he supplied calm encouragement and honest friendship—the right things at the right time for an uncertain newcomer. He and Sandy opened their home and hearts to us. We would talk about what happens when you leave a metropolis to raise a family in a smaller, more humane, but sometimes less private, environment. I could see how important family was to them and how much they valued the quality of life that was possible in Lexington. In the often-frenzied moments of those first few years, Sandy in particular would remind me humorously that I was here now, not in Washington! And Tim would always talk about teaching, the dynamic of the classroom, the essence of the good teacher, the need to communicate with students honestly, and this school's special focus on fostering relationships of trust between teacher and student. He knew that the spirit that pervades this school was rare in the world of legal education and that it required attention and nurturing. For him, the "open door

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policy" meant something: a commitment to the growth and well-being of students, a consistency of care.

It is impossible for me to conceive of the top floor of the law school without Tim's joyful presence. I think of him in various attire: his well-tailored suits in Lewis Hall, his transformation into the Pope at memorable student picnics in early fall, his elfin appearance at the annual holiday lunch for faculty and staff. Who was more exuberant, more human, than Tim Philipps? And who was more blessedly irreverent in the face of too much pomp or circumstance?

From Tim's example, I learned much about the craft of being an academic lawyer. He gave me a sense of how one could bring sanity and balance to the obligations of teaching and writing, and how a writer's touch could bring just about anything alive, including the tax code.

In the years ahead, it will be Tim Philipps's concept of the good teacher that will continue to speak, urging us not to forget the students amidst our various preoccupations, reforms, and technologies. That's wise counsel, and I hope we listen.

E. Patrick Philipps*

If I had been asked a year ago to write some reminiscence of my brother Tim, the finished product would be full of funny stories concerning Tim and our family because no one ever liked to laugh more, or louder, than Tim—especially if the funny story was about him. But it's not last year, and humor doesn't come as easily anymore.

And while Tim has maintained *his* sense of humor during the last few months, it has not been so easy for the rest of the family Even Tim's laughter is sporadic, and much more subdued. The word cancer doesn't inspire much comedy It does inspire a lot of caring, though. And while we've always loved Tim, we now express these feelings to him much more often. One of the most interesting expressions of caring for others came from Tim himself. When he learned that his condition was terminal, he withheld the information from his youngest daughter for 24 hours since she had an exam the next day for which to prepare. Always the Professor!

* Brother of J. Timothy Philipps, Wheeling, West Virginia.

Tim was the first child born to my parents, and was the "King of the Castle" for eight years until I came along in 1948. This isn't to say I became King, but he must have lost some of the limelight. Our younger brother Denny followed in 1953, and then our sister Mary in 1957

Mom and Dad were proud, hardworking, caring parents, and they instilled these traits in their children. They also taught us two other virtues: honor and duty When Dad passed away in early July of 1992, Tim spoke to the congregation at the church service about these very same gifts from our parents. Mom is still alive, but in weakened health. Tim's illness has been a terrible blow to her.

Mom and Dad were always extremely proud of Tim's many accomplishments, from his early scholastic promise, his high school basketball heroics, being named to the Ohio All State Basketball Team, academic achievements at Wheeling College, Georgetown University Law Center, and Harvard Law School, and finally to his being named a law professor.

Tim is also very proud of his achievements, but has always been most proud of his basketball accomplishments. That is, until he attained his position on the faculty of the Washington and Lee School of Law. From his very first visit to the school, he has been one of the greatest advocates of Washington and Lee, the city of Lexington, and, in fact, the entire Shenandoah Valley He has truly found a home, and his affection for Lexington, Washington and Lee, and especially the students, is truly genuine and sincere. You would think he had been born in Lexington.

I truly believe that fate took Tim to Lexington, Virginia, and more importantly, to Washington and Lee. There he came face to face with the legend of Robert E. Lee and was quite taken with Lee's definition of a "gentleman." Honor and duty play a prominent role in the definition, and since Tim takes extreme pride in his honesty, and his sense of duty, Lee's words were like a homecoming for him. There, in print, were Mom and Dad's "upbringing efforts!"

Tim has always seemed to be very popular with his students, and I think they care for him so much because he has always cared for them. He always has attempted to instill in them knowledge and ethics, not to mention honor and duty, which Tim believes are virtues everyone, especially lawyers, should embrace.

Writing this tribute to Tim has been very difficult for me. I didn't know how to start, and frankly, I'm not certain how to finish. Perhaps the best manner by which to express my feelings, and, in fact, those of the entire family, is by quoting from a book entitled *The Rise of Theodore Roosevelt* by Edmund Morris. Upon suffering the death of both his mother

and wife within hours of each other, Roosevelt drew a cross in his diary that day, and wrote below it, "The Light has gone out of my life."

If Tim loses his battle with cancer, a light will go out of my life, and that of the entire Philipps family But the light of his memory and accomplishments will always remain with Washington and Lee, the Lexington community, the students he has touched, and especially with the family he loves so much.

John N. Post*

Tim and I met one late August day in 1965, in what was then known as Third Old North, the third floor of the Old North Dormitory at Georgetown University in Washington. After attaining one of the highest LSAT scores in the country during his senior year at Wheeling College in Wheeling, West Virginia, Tim had been offered a full scholarship at the Georgetown University Law Center and a job as a resident assistant in the undergraduate dormitories to cover his room and board. With him he brought a 1954 Buick, a very sparse wardrobe, and six peanut butter sandwiches his mother had made.

There was a party for the RAs that night, and it did not go well for Tim. He was "country," and Georgetown was anything but. By midnight he was ready to go back to Wheeling; we sat on the steps of the Dahlgren Chapel, and it was almost dawn before Tim was dissuaded. Thus began a friendship that was to last our lives. It did not take long for the law school community to recognize Tim's extraordinary intellectual gifts. Within weeks, other students were taking notes when he recited in class. By the end of the first semester, Tim was squaring off with Georgetown's version of Professor Kingsfield, the Reverend Joseph Snee, S.J One night we returned to Tim's room to find Father Snee there having a nightcap with Tim's roommate. The discussion found its way to how much Agency law we were learning in Father Snee's class, and Tim told Father Snee that he had learned more Agency law in a business law course at Wheeling College. "Fine," replied Father Snee, "we'll all find out how much Agency law you know when I grade your exam paper." Not to be outdone,

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Tim assured him it would be the highest grade in the class. Tim's grade in Agency—74—was the highest grade in the class. It was also the lowest grade he received in law school. And so began another of Tim's lifelong friendships.

Tim was not given to moderation, and just as he welcomed academic challenges, he welcomed any occasion for a party His birthday was typical. Tim would start planning and talking about it at least a month in advance, involve as many of his friends as were available, and then totally debilitate himself in the observance. During his second year, after his birthday party, we were unable to get him out of bed for three days.

By his third year, Sandy had entered Tim's life. They were to be married as soon as he finished law school. Tim still had no money, so his friends had a party and collected about $450 for them. After our last exam, Tim and I, along with another friend, Walter Painter, set out for Wheeling in Walt's convertible with a case of beer. About two-thirds of the way there, Tim discovered that he had lost his wallet and the $450. He was distraught and determined to find it. We went back to each place we had stopped but could not find the wallet. It was a glum group that was sitting in Tim's parents' house that night when a call came from a farmer in western Maryland, who said he had found a wallet with "a lot of money in it." The resulting celebration caused Tim's best man, two of his ushers, and Father Snee, who was to officiate at the wedding the next morning, to oversleep. As Tim rousted us out of bed, Father Snee reassured him, "Don't worry, nothing's going to start until I get there."

Tim and Sandy eventually became the only couple I know who married each other twice. After they remarried, Tim would delight in telling people that he had been divorced "but it didn't work out."

After Georgetown, Tim spent a year studying tax law at the Harvard Law School. I will never forget a prediction he made during one of my visits there. Tim said that the next fundamental change in federal tax policy would be to tax capital gains at the same rate as ordinary income. When I asked him how long it would take for that change to occur, he said, "About twenty years." Twenty years later I was to wonder whether Senator Bill Bradley had been eavesdropping in the wings.

After Harvard, Tim started his teaching career at West Virginia University in 1967 Tim's life as an academician was not ruled by the "publish or perish" syndrome that permeates higher education in this country Often his writings reflected topics which caught his interest or concern. In 1978 he consulted with my law firm on a case in which the parties faced millions of dollars in federal tax liabilities. Tim spent several

days with the files and conceived a solution which, as he explained, involved one serious flaw; it was without precedent or authority The result was a 1978 article in the *Loyola of Los Angeles Law Review* [1] An article in 1989 reflected Tim's concern for students and his love of country music: *Uncle Sam Gets the Goldmine—Students Get the Shaft: Federal Tax Treatment of Student Loan Indebtedness*.[2] Tim eventually became "Of Counsel" to my law firm, providing tax advice which was invariably sound and practical. The lawyers in our firm and our clients delighted in working with him.

It does not seem that thirty years have passed since that late August day in 1965. During a talk Tim gave recently at Washington and Lee, he reflected on his life, saying that as a teacher his overriding goal had been to help his students be better people. He has had the same effect on his friends.

Frederick P Stamp, Jr.*

Tim Philipps was collecting honors and receiving high praise long before he came to Lexington to explain the mysteries of the Internal Revenue Code to students at the W&L School of Law

People in my neighborhood, the Upper Ohio Valley around Wheeling, West Virginia, still recall and love to talk about Tim's high school basketball career at Barnesville High School where he consistently made the All Valley Team, scoring an average of 30 points a game, even though he stood 5'6" tall and weighed around 115 pounds at the time. Bill Van Horne, sports editor of the *Wheeling News-Register* told me recently, "People realized that when they came to see Tim Philipps at Barnesville High they were going to watch an exciting player and an exciting game."

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1. J. Timothy Philipps & Gregg D. Hackethal, *Use of Internal Revenue Code Section 355 to Separate Shareholder Interests in Cross-Ownership Situations*, 11 LOY L.A. L. REV 757 (1978).

2. J. Timothy Philipps & Timothy G. Hatfield, *Uncle Sam Gets the Goldmine—Students Get the Shaft: Federal Tax Treatment of Student Loan Indebtedness*, 15 SETON HALL LEGIS. J. 249 (1991).

* Chief Judge, United States District Court for the Northern District of West Virginia, Wheeling, West Virginia.

Tim continued to excel at basketball at Wheeling College, but he may have realized then that his height and weight might not carry him to the NBA because he proceeded to compile another still talked about average, a 3.99 GPA, earning him a summa cum laude degree, which was soon followed by a J.D degree at Georgetown and an LL.M. degree at Harvard.

I have known Tim from his teaching days at West Virginia University College of Law where the Student Bar Association there, as have his students at Washington and Lee, voted him their school's outstanding law professor. So, I was delighted in the fall of 1992 when I received a call from Tim saying that he was eligible to take a sabbatical leave during the fall of the following year and asking me if he might spend a few months working in my court as a law clerk. This was, for me, just too good to be true, and in September 1993, Professor Philipps joined me and my two regular law clerks, Tom Johnston and Ellen Sohn, for several months. It was a wonderful time for all of us. Although there were no tax cases on our trial docket during that period, Tim showed us that good research and writing are possible no matter what one's specialty in the law Many people noticed that during that short time period, the quality of my written opinions improved considerably! Tim Philipps also demonstrated what every good lawyer knows, either by instinct or by training: that common sense combined with a sense of humor are invaluable in approaching and deciding almost any legal problem.

I am honored to have been asked to join others in offering these remarks to be included in the special tribute to Professor Philipps upon his retirement from the law faculty The teaching and practice of law will always be better served if there are people like Tim Philipps devoted to it.

Barry Sullivan*

God is our hope and strength, a very present help
in trouble.
Therefore will we not fear, though the earth be
moved, and though the hills be carried into the
midst of the sea;

* Dean and Professor of Law, Washington and Lee University

> Though the waters thereof rage and swell, and though the mountains shake at the tempest of the same.
>
> — Psalms 46:1-3

It is presumptuous of me to write even a few words in honor of Tim Philipps. I am keenly aware of that. After all, Tim was not my teacher, so I cannot speak from personal knowledge about the excellence of his teaching. Nor can I pretend to speak with authority about his scholarly contributions to the field of taxation. I am no tax lawyer. Even as a colleague, my credentials are suspect; Tim and I can measure our colleagueship only in terms of weeks. Nonetheless, when the editors of the *Law Review* invited Tim's colleagues to write a few words in tribute to him, my respect for Tim compelled me to respond.

I first met Tim Philipps on a Saturday afternoon in May I had not yet moved to Lexington, but I was here for Alumni Weekend. At that time, Tim was recovering from what we all thought was a successful operation. He was frail, but chipper. We happened to be going to the same place, and we walked a couple of blocks together. It was only a few steps into that walk that I first heard Tim's infectious, trademark laugh. I heard it several more times before we reached our destination.

I next saw Tim on July 7 It was my second day in residence at the Law School, and we visited for a while in his office. He looked more robust than in May, but was on his way to the doctor. On the following day, Tim gave me the report from his doctors. It was wholly unexpected. The cancer had recurred; the prognosis was not good; he likely had only a few months to live. Tim told me all of this in the most matter-of-fact way He did not feel sorry for himself; he felt sorry for me because I would have to find someone to teach tax on very short notice.

So I came to know Tim only in the crucible of illness, and I can give testimony only about the way in which Tim has faced that illness. But that is more than enough for what I need to say From the moment Tim first told me about his doctors' revised evaluation of his condition, I have had many reasons to be moved and inspired by his courage, his tenacity, his grace, and his concern for others. I have had many more opportunities to hear Tim's laugh, and to laugh with him. I also have learned much about Tim from others during these past weeks. Students have recalled the profound effect which Tim has had on their careers and lives during the past twenty-eight years; that does not often happen, and it is good when it

happens. I also know that Tim has deeply influenced and enriched the lives of his colleagues in many ways; that too is good.

I have had the pleasure of knowing Tim for only a short time, but he has influenced me as well. In my case, I can say that my life has been enriched by the qualities of character that Tim has demonstrated during these difficult weeks. I have been deeply moved by the courage that Tim has shown; by the tenacity with which he has held onto life; and by his unfailing concern for his wife and daughters, for his friends and relatives, and for his colleagues and students. I have been moved by all of those responses to his illness, but particularly by his concern for others. For those who have known him longer, I am sure that Tim's sustained concern for all of us in these difficult days seems only the most current manifestation of a love and devotion to the good of his community that Tim has shown, and has endeavored to nurture in the hearts of others, over many years. In a sense, that is clear even from my limited vantage point. I was privileged to see those feelings of community reflected in the hundreds of people who came to celebrate Tim's life at the party we held in his honor in July We were there, of course, to pay tribute to Tim. In another sense, however, we were there to pay tribute to the community itself, and to the values the community represents. I am sure that that fact was not lost on Tim, and that he approved it mightily

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Scott Sundby*

Life. It is so easy to walk with our heads down, especially when everyone else seems to be going in the same direction, and suddenly discover that we have strayed far from the path we intended to follow We meant to make more time for our family, our students, our friends, but somehow the immediate press of the everyday world took over. We used to relish teaching a particular case and watching the students delight in their discovery of its intricacies, but now our thoughts are on the overdue article draft or committee report. An office visit from a curious student was a wonderful chance to chat, but now ten phone calls beckon from the voice mail to be returned. We can sense that our priorities have been tossed

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* Professor of Law, Washington and Lee University

askew, but trying to find which way is up is not easy Sometimes we get lucky, though, and a special individual comes into our lives who somehow has kept his perspective and, by doing so, helps us regain ours. Tim Philipps is such a person for me.

I have never met a teacher who is so well-loved by his students as Tim. No doubt this is in part because of his expansive knowledge and energetic teaching style, but others have had such attributes and not achieved legendary status. No, I think it is because Tim has never lost sight of the fact that he first and foremost is a teacher. This does not mean that one doesn't pursue scholarship, as Tim's first-rate scholarship shows, but it does mean that one pursues scholarship without losing sight that our first obligation is to our students. I suspect all of this may sound strange to individuals outside of academia, but for those of us who live in a world of publish or perish, maintaining such a perspective is no easy task. One must be sufficiently self-confident to recognize that a law professor's most important contribution is not in writing the article lecturing the courts on how they have gone wrong, but in the everyday interaction with students in an effort to help them do and see what is right. I admire Tim for having that self-confidence and for the example he has set for others, like me, to follow Thank you Tim and God bless you.

Gerald F Uelmen*

Life's "defining moments" are rarely perceived as such when they happen. In retrospect, I know that one of the defining moments of my life was the October day in 1962 when I was assigned to live in Room 400 of Old North on the campus of Georgetown University I was a very naive first year law student who landed a job as a "dormitory prefect" on Georgetown's undergraduate campus. Until I went off to law school, I had lived at home in a very typical middle class suburb of Los Angeles. I had never encountered anyone who actually chewed tobacco, or thought that Iron City beer was the nectar of the gods. Although I had been exposed to the glories of Hank Williams, and could even sing a few of his tunes, I was more interested in developing an ear for Mozart. I had a singular fixation

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on preparing myself to join the elite ranks of a respected profession and filling up a curriculum vitae with accolades that would be my ticket to success.

The first thing I noticed when I walked into my newly assigned attic quarters was the spittoon in the middle of the floor. Every spittoon I had ever seen before was a decorative antique. This one was obviously fully employed and by someone with very poor aim.

My encounter with my new roommate was not the first time I had seen him. We were in the same section of the first-year class since we both had surnames in the "L to Z" half of the alphabet. (We rarely met our "A to K" classmates.) In those days, we were expected to stand when called on to recite, but J Timothy Philipps achieved no greater stature when he stood, so I didn't have a memorable impression of him. I'll never forget the impression I formed when he welcomed me to Old North 400, though. I was fascinated by the incongruous combination of backwoods country boy and penetrating flasher of brilliant insightfulness. We quickly settled into a comfortable friendship and realized how much we could learn from each other.

I discovered one of the real joys of Tim's life is to shock and astound others. No party could end without an outrageous finale by Tim. One I particularly remember was "The Dance of the Seven Veils." Tim had an engaging ability to coax others into outrageous behavior as well. My forgettable debut as a country singer at a local dive was engineered by Tim. I sang "I Got Stripes," the lyrics to which I can only remember when drunk.

My first visit to the mountains and valleys of West Virginia was guided by Tim, and I discovered that Tim's warm folksiness, combined with cool caginess, were products of the environment in which he grew up. I gained a great deal of respect for the independence and self-sufficiency which that environment nurtured. Tim often reflects on the three most important lessons he learned as a kid: Be Nice, Don't Talk Back, and Don't Jump on the Bed.

Tim has a pretty clear idea of what he wants from life. Actually, we discovered our career aspirations were identical. We both realized that being a law professor had to be the cushiest job in the world. We stayed in close touch after law school and for a brief while, we were faculty colleagues teaching together at Loyola Law School in Los Angeles. The Loyola students quickly realized what a great teacher he was and kept his classrooms packed. Faculty meetings were enlivened by Tim's homespun

homilies, and alumni were entertained by his wit. In one memorable exchange, Tim even rendered Howard Cosell speechless. No mean feat.

But life as a California commuter held few attractions, and his roots summoned Tim back to Appalachia.

A career in legal academia brings one in contact with lots of people who are more impressed with themselves than they ought to be. This is a life in which too many seem to relish ranking everyone else, after putting themselves first. Tim Philipps always manages to cut through that B.S., exalting the humble and humbling the exalted. Those of us who have learned some of the wonderful lessons of life that Tim teaches so well will always know where he ranks: right at the top.