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## In Memoriam: Jerry Phillips: A Scholar & a Gentleman

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# IN MEMORIAM, PROFESSOR JERRY J. PHILLIPS

## BIOGRAPHY

Jerry Phillips was one of Tennessee's own. Although born in Charlotte, North Carolina, he grew up near Norris and attended Norris High School. He then attended Yale University, became a member of Phi Beta Kappa, and graduated in 1956 with a major in English Literature. From there, he went to Cambridge University in England on a Mellon Fellowship, living in Clare College and reading history. Jerry and I met on the ship coming back from Europe in 1958, and we were married a year later on the date our ship had sailed from Southampton.

He entered Yale Law School in the fall of 1958 and graduated with an LLB in 1961. After his second year in law school, he worked for Holland & Hart, a law firm in Denver; but disproving the adage "you can't go home again," he returned after graduation to Chattanooga and joined the firm of Miller & Martin (then with the handy name of Miller, Martin, Hitchings, Tipton, and Lenihan . . .).

In 1967 he joined the law faculty at the University of Tennessee under then Dean William Wicker—a felicitous move for him and for the law school (in the humble opinion of his wife). He stayed for over 37 years. Dix Noel, one of the senior faculty members, asked Jerry to co-author a West Nutshell book on Torts. Thus began his legal writing career, which blossomed with several casebooks and treatises on torts and products liability, and over 190 articles for law journals and magazines in the U.S. and abroad. Following up on his lifelong passion for literature, he and Professor Judy Cornett co-authored *Sound and Sense: A Text on Law and Literature*, a book used in teaching Law and Literature.

Jerry lectured at the University of Adelaide in Australia for six weeks in the summer (winter in Australia) of 1988 and returned two years later to teach a course at Bond University in Queensland, near Brisbane. He also taught at Bonn University in Bonn, Germany, and lectured at several colleges in England.

Jerry and I had two children, Sherman and Dorothy, and sundry dogs and cats (and guinea pigs and fish in the child-rearing years). Maria, our half-Newfoundland dog, kept him company during the last five years. In earlier years he could be found walking the dog along the river in Sequoyah Park and mowing the lawn in funny hats. He also sported these to the law school and elsewhere to the amusement of those who spotted him thus adorned. His other activities included reading all sorts of non-law material and singing, usually not at the same time. He performed serious music for various music clubs and was soloist at St. John's Episcopal Cathedral (then Church) and more recently at the Christian Science Church. But law students heard him entertain in a considerably lighter vein on Law Day almost every year, usually with other talented students and almost always in

costume. Often they composed original lyrics (usually not X-rated) for these memorable events. He thoroughly enjoyed interaction with law students—in classes, at the Law Review, and on Law Day. These were an extension of his life of the mind, for he was foremost a scholar and also a Renaissance man.

ANNE PHILLIPS\*

### JERRY PHILLIPS: A SCHOLAR AND A GENTLEMAN

“An absolute gentleman, full of most excellent differences, of very soft society and great showing.”<sup>1</sup>

I’ve thrown away several drafts of this short dedication to Jerry Phillips (“Professor P,” as I always affectionately called him, even years after graduation). Although I make my living articulating ideas, words seem to fail me this time. How do you “sum up” over a decade of memories of someone so wonderfully rich of heart and character? Professor Phillips was a friend, colleague, mentor, and professor. He was one of the last true gentleman-scholars.

When I think of Professor Phillips, the image is this: a scholarly looking gent at the front of a classroom, gray hair disheveled, bushy black eyebrows raised inquisitively, glasses hanging from a string around his neck, thumbs tucked inside the belt of his high-waisted polyester pants, and a pregnant pause filling the air. Some of the students in the room appear pained, their faces contorted by confusion; others are smiling, their faces glowing with the childish delight of seeing the world from a new angle. I must admit that, as a student in five of Professor Phillips’ classes, I experienced both emotions on a regular basis. Professor Phillips did not spoon feed his students; he instinctively knew that the most precious gifts are earned. To borrow an old adage, he wouldn’t give his intellectually hungry students fish; he’d teach them how to fish, so they’d be able to feed themselves. Excelling in one of his classes required good old-fashioned

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\* Anne Phillips graduated from Smith College with a degree in English literature. She worked at various jobs while Jerry finished Yale Law School, and then in Chattanooga and Knoxville. Her passion was whitewater paddling, mostly solo open canoe, but also tandem canoe and kayak (sometimes, less successfully). She published a couple of paddling articles, but mostly just kept journals of adventures on land and water. Now she prefers tamer activities, such as multi-day canoe trips in Canada or on long rivers in the U.S., day hiking in the Smokies and elsewhere, and club-level tennis. She studies classical guitar and avidly follows the Lady Vols basketball team.

1. WILLIAM SHAKESPEARE, *HAMLET*, act 5, sc. 2.

*thinking*—not just about what the law *is*, but *why* it is, *how* it came to be that way, and what it normatively should be. If your heart and mind were open, Professor Phillips was able and willing to take you on the educational ride of your life.

If pedagogy is an art, Professor Phillips was a Picasso. Students spend thousands of dollars for higher education, yet professors too often treat teaching as a fly buzzing about their heads—a necessary annoyance to be shooed away as quickly as possible. Then there are those professorial gems, who actually seem to relish the opportunity to teach, interact, engage, and debate. Professor Phillips would sing (beautifully), dance (not so beautifully), quote the Bible or Shakespeare, spin amusing hypotheticals (usually involving his colleagues, with a decided emphasis on the decanal variety), and pose imponderable questions (“Is it intentional infliction of emotional distress to teach the Rule Against Perpetuities?”).

Jerry Phillips was more than just a prolific scholar and gifted teacher; he was, for countless law students, a willing mentor. Like many law students, I came to law school with the image of Professor Kingsfield in my head. After being accepted to U.T., I faithfully read the law school catalog and its descriptions of its accomplished faculty. I saw Professor Phillips’ degrees and writings and was instantly in awe. I had a strong interest in the subjects Professor Phillips taught, but I imagined he would be inaccessible, mysterious, perhaps even arrogant. It was almost shocking to find that this demigod of products liability was downright friendly. He was constantly helping the Law Review, moot court teams, and individual students. As a third-year student, Professor Phillips agreed to supervise my too-ambitious independent study project. He read countless drafts, editing each one with care. He suggested volumes of books, journal articles, and cases to read. He spent hours talking to me about the finer points of my theory, both its strengths and weaknesses. These hours spent outside the classroom were classic Professor Phillips: he wasn’t consciously trying to be a role model; he just *was*. After graduation, he continued to offer sage advice during my clerkship, graduate study, and especially during my first few years of law teaching. Letters arrived in the mail addressed affectionately to “Her Excellency,” “Queen,” and “Chief Justice,” full of laugh-out-loud insightful quips aimed at politicians, the judiciary, and the academy.

Like so many other students, my mind and life are richer for having known Jerry Phillips. He sparked my curiosity, assuaged insecurity about my intellect and writing, kindled my ambition, and encouraged me to pursue a life of teaching and scholarship. He was soft-spoken, kind-hearted and brilliant; “full of most excellent differences.” I will miss him.

ELIZABETH PRICE FOLEY\*

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\* Professor of Law, Florida International University College of Law. B.A., Emory University; J.D., University of Tennessee College of Law; LL.M., Harvard Law School.

### I REMEMBER JERRY

In 1997 the *Tennessee Law Review* published a wonderful dedication to an outstanding legal scholar—Jerry Phillips. Jerry is now gone, and many people will miss the opportunity to have discussions with him. I had the honor to be among those who wrote about Jerry in 1997. And now, sadly, I will be writing about him for the last time in this short article. For anyone who desires to know a little more about Jerry, I would suggest reading both of the *Tennessee Law Review*'s dedications. My reminiscences about Jerry here will be short and personal in an attempt to avoid repeating what I've written before.

I used to visit Jerry at his home in Knoxville several times a year. I enjoyed our visits together for several reasons. Jerry and his wife Anne welcomed me as part of their family. Staying at the Phillips' home provided me with the opportunity to observe many of Jerry's endearing qualities, one of which was his unusual sense of humor. When I first visited his home, I asked the names of his dog and cat. Jerry responded, very sincerely and straight forward, that their names were "dawg" and "cat." Whenever I was present, Jerry would call them "dawg" and "cat," so I was convinced that these were their names. It wasn't until several visits later that Anne informed me the animals had proper names—"dawg" was in fact named Louisa. Nevertheless, despite the fact that I knew the pets' proper names, Jerry continued to refer to them as "dawg" and "cat" in my presence, albeit with a twinkle in his eye as he studied my reaction.

During my visits, Jerry and I would start the day off with coffee and breakfast, then he would take "dawg" for a walk along the Tennessee River. Although Jerry normally wore appropriate attire to work, his choice of attire around the house and on the "dawg" walks was, to say the least, interesting. There were times it appeared he grabbed the first clothes he found in the laundry pile—usually a pair of plaid pants and a striped shirt. For the "dawg" walks, he often topped off his mismatched outfits with head gear similar to that of Elmer Fudd's. Over the years I came to realize that proper attire was not paramount on Jerry's mind. His "dawg" walks, I soon learned, were times he would think through whatever matters were on his mind at the time. We had many spirited conversations along the Tennessee River on those walks, covering a multitude of subjects, including, of course, the law. I was the sounding board for his latest pet issue. On many occasions I found that I learned as much or more on these walks as I had during months of previous research.

After returning from the river, Jerry and I would fall into a routine that gradually developed over the years. Jerry, not being an outdoorsman, would head off for the law school to read, write, or prepare for a class while his wife Anne, a dedicated outdoorswoman, and I would pursue other activities. I love to flyfish, and, quite often, I would drive off to a river or

stream to fish for trout. We would all meet up again in the evening to enjoy some wine, music, and a wonderful meal.

Evening meals at the Phillips' home were always a lively affair with conversations covering everything from politics, travel, law, and books to religion. Immediately after the meal was over, Jerry would grab his cigar, and sometimes a drink, and head for the porch for his daily smoke. There were some very interesting conversations going on in the cool night air with his smoke blowing in the breeze. On many occasions during these porch talks, Jerry would continue discussing the same subject he started with in the morning on the "dawg" walk. The conversations could be wide ranging, but the constant subject always involved the law. Jerry was always researching something about the law and would probe and push the limits of an issue. Those conversations would begin with what others had opined and would end with Jerry's own particular approach to the problem, one that was usually unique and always thoughtful and thought provoking. These "porch talks" with Jerry were often inspirational for me. Several years ago, during one of these talks, Jerry discussed his thoughts and concerns about the American Law Institute's steady march away from consumer protection in the field of products liability. That talk became my motivation for spending the next two and one-half years researching and writing about that issue.

I miss our "dawg walks" and "porch talks" very much, but I will never forget them.

JOHN VARGO\*

### LIVING ON

As his colleague and co-advisor to the *Tennessee Law Review*, I am grateful for every moment I shared with Jerry Phillips. Memories come in vivid images—Jerry singing Christmas carols in his red vest or reporting from beneath his black beret the latest political outrage. More poignant though are the daily reminders of the gifts of wisdom, humor, and plain kindness that came from him so naturally and unselfconsciously.

Certainly, I am grateful for all of the opportunities I had to witness the workings of Jerry's mind—not only for the power of his intellect, but even more for the joy he brought to his journeys toward truth. I have never met

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\* Of Counsel with the Tabor Law Firm in Indianapolis, Indiana, and Adjunct professor of Law at Bond University, Queensland, Australia; Deakin University, Melbourne, Australia; and Indiana University, Indianapolis, Indiana.

anyone who thought more deeply or tread more lightly as he followed that path.

When Jerry Phillips learned that I was scheduled to teach Intellectual Property for the first time, he immediately sent me a penciled note stating that he wanted to trademark the American flag and asking me how he might accomplish that goal. Laughing, I advised him I could not help him—that it would not be possible for him to claim trademark rights in the flag at all. But of course that was not the end of the matter. Over the next ten days, with unconcealed merriment and the persistence of a child asking “why?,” Jerry continued to assert his interests, refusing to abandon them without a much better reason than I had thus far provided. In so doing, he challenged my assumptions about the nature of an intellectual property system that could deny him his trademark in the flag. With each of his questions, the law of intellectual property became for me both more elusive and more fun. At last, Jerry responded to one of my reasons by saying, “hmmm . . . yes.”

Not for a moment do I believe that he was satisfied with my answer, only that I had followed the question as far as I could—for now. But his questions remain for me an open channel to possibilities, just as his questions have done for his students and colleagues for so many years.

I am grateful for every chance I had to tag along with Jerry on his intellectual adventures. Most of all, though, I treasure his friendship and his laughter—the presence of his spirit and his heart.

CAROL MCCREHAN PARKER\*

### A FEW WORDS WITH FONDNESS AND GRATITUDE

I miss my friend, Jerry Phillips. I know this is not supposed to be about me, but I just can't help it. You see, in Torts, which I teach and which Jerry Phillips taught (and still teaches me) one of the things that a person has to prove in order to recover is cause-in-fact. That is, a plaintiff in a tort suit must prove that the defendant factually, or actually, caused her injuries. The most common way to establish cause-in-fact is the “but for” test. Under that very common sensical test, a jury, in order to impose liability, must conclude more probably than not, that but for the defendant's wrongful act, the plaintiff would not have suffered the particular injuries that he or she suffered.<sup>1</sup>

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\* Associate Professor and Director of Legal Writing, University of Tennessee College of Law. B.S., M.A., Northwestern University; J.D., University of Illinois.

1. Of course, there are other elements and indeed there are alternatives to the “but for” test for cause-in-fact; however, the “but for” test is the most commonly accepted way to establish (or not establish) cause-in-fact.



And, but for Jerry Phillips, I would not be here at the University of Tennessee College of Law. So, I owe him a great big debt of thanks. When Tennessee was last looking for a dean for our law school, my friend and mentor, Frank Maraist at LSU, saw the announcement. It just so happened that Maraist co-authored a casebook on Torts with the renowned Jerry Phillips. Having had enough of me in the Bayou State and knowing my deluded desire to try my hand at being a law school dean, Maraist offered to call Phillips on my behalf. I was flabbergasted. After all, this was *the* Jerry Phillips we were talking about. For a Torts teacher, Jerry was more than a household name. He was one of the most well-known, well-respected, and prolific of Torts and Products Liability scholars out there. He was one of Tennessee's most brightly shining lights.

In any event, Maraist called Phillips and reported back that I myself should call the one and only Phillips. Shyly, I picked up the phone and called Tennessee. My life was about to change. My initial conversation with Jerry was as pleasant, warm, and entertaining as all our future interactions would be. Jerry asked me why in the name of the Lord anyone would want to be a law school dean. When I told him I really had no idea why or what a law school dean really did or why I thought I would be close to good at it, I believe I won his vote. He told me that he would mention my name to the Dean Search Committee and encouraged me to send along a resume. He did; I did. And here I am.

In my time here with Jerry, I gathered debt. The longer I was here the more he did for me, and the more I owed him. Sometime during my second year at Tennessee, Jerry and his co-authors welcomed me as a co-author on their Torts casebook. This is the casebook that traces its lineage directly to the Torts casebook published by Jerry and the late, great Dix Noel. To be included as a co-author put this unsure dean and tentative torts teacher in some pretty fast company. While I have no doubt that I never quite caught up, Jerry was kind enough to attach a sidecar to his intellectual motorcycle and pull me along. He sent me cases about the subjects of the chapters which I had been assigned to revise (including Chapter 6 on cause-in-fact). Jerry was kind enough to comment favorably on my suggested changes and to make my parts of the book better than they would have been without Jerry's help. Now, when I teach from the book, I know how lucky I am to have been invited to participate and to have worked with the master.

My debt to Jerry is not limited to the book—it extends to the classroom as well. Near the end of the Fall Semester of 2002, when it first became apparent that Jerry would have to spend some time away from the classroom for medical treatment, Jerry, John Sobieski (our world class Associate Dean for Academic Affairs), Rachel Inman (our fantastic Assistant Dean for Student Affairs), and I put our collective heads together—and that must have been a sight. We had a conversation about what to do with Jerry's Torts II section—a class of about fifty first-year students. We decided to combine Jerry's section with mine and created a

Super Section. The decision was made (note the passive voice here) that I would teach the class alone until Jerry could come back and that then we would team-teach the class.

I was on my own for the first month or so—through vicarious liability, strict liability for engaging in ultrahazardous or abnormally dangerous activities, nuisance, strict products liability, and damages. Critically, Jerry arrived just as we were finishing damages to save me from doing more (damage that is!).

We then turned our attention to defamation. It is my experience that moving from the law of damages to the law of defamation in Torts II is a serious shifting of intellectual gears. With the conclusion of damages, in a way, the student completes a course in tortious invasion of personal security and property that began in the fall. The shift to defamation is a shift to the analysis of the law's protection of a person's interest in her reputation. It requires an intensive analysis of the role of the First Amendment's guarantees of free speech and of free press. Consequently, especially in the constitutional mix, the student is confronted with a series of critical, ground-breaking U.S. Supreme Court opinions that are, at times, Delphic in their pronouncements. Another way to say that is the opinions are not always so clear to those of us planted on the ground. The student must read each of these cases several times and try to make sense of them—not just individually, but as a group. The long and the short of it is that defamation is some pretty hard stuff, especially for the first-year law student.

Moreover, I will confess that I view myself as more knowledgeable about the personal injury material than the reputation material (although I am getting better all the time). Consequently, I get a little nervous every time I start defamation.

In the Super Section last Spring, I was more than just a little nervous as we started defamation because I was going to be team-teaching the material with one of the most famous Torts scholars in the world. I felt as nervous as I felt the first time that I was ever called on in a Torts class to recite about a case called *McGuire v. Almy* dealing with the liability of the insane for intentional torts. The first day that Jerry and I were to team-teach defamation, I walked in the back door of the classroom, and there he was in the front of the room, ready to go, and away we went. It took me a little while to get used to the fact that I was one of the professors in the front of the room and not one of the students because all I wanted to do was listen and try and answer Jerry's questions.

Then, one day, I knew I was ready, and I jumped in with vigor, if not confidence. Imagine the dean not able to answer his senior colleague's questions. But, like the first-year student who has decided to raise his or her hand in class for the first time, I was going to try. As I recall, we were talking about the impact of defamation on intentional infliction of emotional distress claims or a related subject. In any event, somehow or other we got involved in a review of the entire law of defamation and the

Constitution and unanswered questions and the policies involved and whether any of it made any sense at all. Jerry would make a point, and I would ask a question. He would rejoin, and I would ask another question. He would respond and reach beyond and ask me another question. I would ask him another question. He would reply and reach beyond and loop back around and remind me that I had not answered any of his questions yet.

After class, I was panting. Seventy-five minutes of the meaning of legal life (at least in defamation); my head hurt from all Jerry had taught me. As students went up to Jerry to ask him questions, I moved to my right (stage right if you will) and closed up my book and notes (to which I never had either the chance nor the need to refer). As I turned back to watch Jerry engage his entourage, a student came up to me. Actually, it was my friend, Daniel Olivas, a member of the Class of 2005.

“What’ d’ya think?” I asked.

“That was something,” he said. Let me make myself perfectly clear; I am paraphrasing Olivas throughout. The good things you take from this recreated conversation are from Olivas; the bad is me or me misquoting him.

“I had fun,” I said.

“It was amazing,” he replied. “You two were really something up there. Professor Phillips was talking about the policies behind the cases. He was seeing interrelationships or possible interrelationships between elements that would never have occurred to us; and he was talking about the relationships between torts that none of us could have dreamed about.” I was nodding and smiling waiting for Olivas to say something about me. “And there you were”—here it comes I thought to myself. “There you were,” he repeated and continued, “just trying to hang on, like the rest of us.” Indeed there I had been—just trying to hang on, and it was an honor and an education to get to try to do so.

Earlier this semester, the day after Jerry died, I went to a restaurant to pick up some pizza “to go” for our family dinner. (Yes, in our house pizza definitely counts as a family dinner). Somehow, a half pepperoni—on one side—and a half mushroom—on the other side—had turned into a half cheese—on one side—and a half pepperoni *and* mushroom on the other. I foresaw (a good torts word) the ire I would face from my children if I brought that pizza home. I also knew the utter inadequacy of my potential solution: “Can’t you just take the mushrooms off? It will taste the same!”

As a result, I decided to reorder the pizza and wait at the restaurant. Now, it just so happens that this particular restaurant has an impressive selection of draft beers, and since I had twenty minutes or so to wait, I sat down, ordered a beer, and watched ESPN.

Seconds later Olivas, James Foster (another student), and their wives entered the premises. Nothing like students meeting the dean drinking alone! In any event, we said hello and commented how sad we were about

Jerry. I told Olivas I had told my Torts II class that day the story I just related above. He smiled and said: "That really was a great day."

"It sure was for me," I said.

Olivas, who is an accomplished musician, then said: "That day, you two really clicked. You were like a band jamming."

For me, with a deaf ear and no rhythm, being in a band is a sort of dream—an unattainable dream. For Jerry, who could sing and knew music, I bet being in a band would have just been another of his many accomplishments. I'm happy to have been able to be in his band for those few weeks of team-teaching.

One last random reminiscence about why I miss my friend, Jerry Phillips. One of the things a dean has to do in a law school is find people to serve on committees: Admissions, Appointments, Adjuncts, Community, Curriculum, Governance, Tenure Committees, Awards Committees, and more. There are two schools of thought on the decanal appointment of committees. There is the 'I appoint thee' end of conversation approach, and there is the 'Will you please serve on this committee?' approach. For no good reason, except my personality, I follow the latter approach. In my six years of asking people to serve on committees, Jerry Phillips never said no.

Thank you, Jerry.

THOMAS C. GALLIGAN, JR.\*

#### A TRIBUTE TO MY FRIEND AND CO-AUTHOR: PROFESSOR JERRY PHILLIPS

The death of Jerry Phillips is a loss to the entire community of legal scholars. I have known Jerry as a valued friend and co-author for more than twelve years. In 1991 or 1992, I called Jerry and asked if he wanted to co-author a products liability casebook. He agreed, and we met at a lovely restaurant in Knoxville. We rapidly compromised on the divisions of responsibility. The writing of the book consumed about two years. The first edition of our book was published in 1994. The fresh cases and challenging hypotheticals have been well-received by many of our students.

For the second edition, published last year, I suggested that we add Professor Ellen Wertheimer. Jerry was pleased to do so. The second edition brought the cases and materials up to date. The recent California and New York gun cases are featured.

Jerry was a perceptive whistle-blower who organized the conference and *Tennessee Law Review* Symposium on the *Restatement (Third)*

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\* Dean and Elvin E. Overton Professor of Law at the University of Tennessee College of Law.

*Products Liability* in 1993. The purpose of the conference was to highlight the critical problems with the *Restatement (Third) Products Liability*. The papers produced by the conference were published in the *Tennessee Law Review* and have often been cited in state and federal decisions. Jerry's insight and courage to speak have been rewarded in that only one state (Iowa) in twelve years has followed the flawed *Restatement (Third) Products Liability*, Section 2(b), and this was for tobacco, without any discussion or analysis of precedent or theory. Jerry's conference dealing with the *Restatement (Third) Products Liability* was later replicated at the University of Michigan and the University of Kansas.

Many of Jerry's articles are now foundations of the law. The one that first comes to mind deals with the treatment of children in products liability litigation published in the *Virginia Law Review*.

Professor Jerry Phillips will be missed for his dedication, insight, teaching, mentoring, and voluminous contributions to two critical legal disciplines: Torts and Products Liability. His work has added clarity to both of these fields. I will miss him as a valued friend and colleague.

FRANK J. VANDALL\*

### JERRY PHILLIPS, RENAISSANCE MAN

"Whatever anyone says or writes about Jerry Phillips is insufficient."<sup>1</sup>

Jerry Phillips was truly a Renaissance man—a man of profound knowledge and proficiency in many fields. In addition to being a world-renowned expert in Torts and Products Liability, in the early 1990s he became a scholar of Law and Literature. Shortly after I joined the faculty at U.T. in 1992, we began team-teaching the course—a collaboration that culminated in the recent publication of our textbook, *Sound and Sense: A Text on Law and Literature*. This book was a labor of love for him. His primary goal was to get into it as much "great literature" as he could, despite my reluctance to publish an anthology of writing solely by "Dead White Men plus Emily Dickinson." But his impulse (Dante, Shakespeare, Milton, with a little Yeats and Frost for seasoning) was entirely altruistic, grounded in his belief that students *needed* to read this literature—that our decadent, computer-driven, instant-gratification-giving culture had served

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\* Frank J. Vandall has been a Professor of Law at Emory Law School since 1970 and currently teaches first-year courses in Torts and advanced courses in Products Liability. He is the author of two casebooks: *Torts, Cases, Problems and Questions* (1997) and *Our Products Liability System: An Efficient Solution to a Complex Problem* (1994).

1. John Vargo, *To a Friend*, 64 TENN. L. REV. xvii, xvii (1997).

them poorly. When Jerry Phillips spoke of his favorite authors, the adjective he used most was “unsurpassed.” He still believed that some literary works are better than others, and he knew which ones were the best. He did not want our students to miss out on the pleasure to be found in the great works of literature. Why read the rest if you’ve never read the best?

But he also appreciated all the modern multi-cultural works that I pushed to include. He loved the poems of Marilou Awaikta, the Cherokee/Appalachian writer whose poem “An Indian Walks in Me” closes our book. He agreed that Toni Morrison was a great American novelist. He allowed as how Gwendolyn Brooks’ poetry said something important.

It was fun to fight with Jerry Phillips about what to put in the book. It was even more fun convincing him that our publication of the works was probably *not* “fair use” and that we had to get copyright permission. In the ebb and flow of co-authorship, Jerry Phillips always wielded his power graciously, usually giving me my way and insisting on very little (except, unfortunately, for “Lycidas”).

Somewhere along the way—I’m not sure exactly where—Jerry Phillips discovered the Shakespeare Authorship Controversy. And when Jerry Phillips got interested in something, you could bet that something was bound to happen. He read all the books, old and new, on the subject and attended a national conference in Boston. Then he decided that the College of Law should host a national conference devoted to the subject.

Last summer and fall—even as he underwent major surgery—Jerry Phillips picked a date for the conference: June 4-5, 2004. He wrote, called, and e-mailed many of the leading voices in the Shakespeare authorship debate, inviting them to attend the yet-nascent conference. He pestered our Dean to commit money for honoraria and travel. He decided that the conference would be a perfect Continuing Legal Education opportunity because it would deal with evidentiary issues, and insisted that Tennessee evidence guru Don Paine become a principal speaker. In his usual whirlwind fashion, he organized the conference from the ground up.

That is where things stood when, on January 14th, we learned of his death. The conference will go on in his memory and his honor, but it won’t be the same conference. Without the presiding genius of Jerry Phillips, the conference will lack that special spark of enthusiasm and hospitality that he would have brought to it. But the main point is that Jerry Phillips planned this conference during his last illness; despite battling a fierce cancer, he never lost his hope and optimism, and he never allowed his illness to become his identity. Most poignantly, perhaps, I learned after his death that he had submitted a successful proposal to the American Popular Culture Association to present a paper on the Shakespeare Authorship Controversy at its national convention in April 2004. For Jerry Phillips, life continued until it ended.

Those of us who are left behind must grapple with what the loss of Jerry Phillips means. For the field of Torts and Products Liability, it means

that the little guy has lost an advocate. For our law school, it means that we have lost our most energetic mover and shaker. For our students, it means that they will never experience the joy of pure intellectual inquiry that Professor Phillips brought into the classroom. For me, it means that I will never get another note in my mailbox decrying the forces of evil that lurk everywhere in our modern world—especially in the White House. When we lost Jerry Phillips, we lost an insightful legal scholar, a consummate teacher, a brilliant wit and intellect, a kind and charitable friend—we lost a Renaissance man.

JUDY M. CORNETT\*

### A MAN TO REMEMBER

It was our great good fortune to be invited to sing Christmas carols with Jerry Phillips about a week before Christmas 2003. The soiree was chiefly designed to lift the spirits of Professor Phillips; we have no doubt that it accomplished that goal. For both of us, the evening also served as a kind of summation of our friendships with Jerry Phillips, as passing moments triggered memories of past times together.

JTW: Between rounds of singing, Professor Phillips held forth with various carolers. When it was my turn, he launched into an impromptu review of one of the many books he was then reading (the book was Richard Holloway's *Doubts and Loves: What is Left of Christianity*.) In a few deft sentences, he had synthesized the author's thesis, explained its relevance to the issues of the day, and offered his own gloss on the topic. It was a typical Phillips performance—engaged, erudite, and irreverent. Moments like this had made my law school experience particularly rich.

RL: From the moment I first met Professor Phillips, I felt like he existed on a different plane—like he was an “insider” on some great life insight. With an impish grin and sparkle in his eyes, Professor Phillips always seemed to find immense joy by sharing some brilliant but devilish observation that would otherwise go unnoticed. Even in the midst of his illness, this aspect of the Great Professor continued to shine through. His head covered with a maroon fedora, a flashing reindeer pin on his lapel, Professor Phillips sat in his chair, surrounded by friends, colleagues, and admirers, singing holiday songs, eyes shining. Phillips' world was a magical place to visit.

JTW: Professor Phillips loved music, and he loved to sing. The first

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time I sang with him was when he had organized a small pick-up group to perform two pieces at a law school function. The opening song was a hymn from the Southern Harmony. The second was a Rolling Stones classic. A devotee of the former, he tackled the latter with a sense of style, gusto, and good humor I could only envy! The only other time I sang with him was during our evening of caroling. In our last round of the evening, I stood behind his chair while he and I sang the lower harmony parts underneath the rest of the carolers' melody. It was a truly moving musical—and personal—experience.

RL: Following law school, Professor Phillips and I kept in touch through correspondence and luncheons. It was during these interactions that my suspicions were confirmed: Phillips did indeed exist on a higher plane. During our exchanges, we shared book or movie recommendations, which we would later discuss. He turned me on to *Charade* and *Seabiscuit*, while I introduced him to *It's a Wonderful Life* and *Cold Sassy Tree*. During a break in the carols, I told him about a recent book I'd read, *The Five People You Meet in Heaven*. The book focuses on the impact we each have on the lives around us. In one of the last letters I received from him, Professor Phillips let me know that he had read the book and supposed that he agreed that we are all connected in some way or another. As I watched Phillips sing Christmas tunes, I remember thinking—and I will always believe—that he is one of my five.

The final song of the evening was "Silent Night." As we sang, we watched our dear professor. We knew that this was a moment that we would always remember; we knew it was our final goodbye. And, more than anything, we were, and are, filled with gratitude for having had the unbelievable opportunity to share a slice of Phillips' rich and wonderful life.

REGINA M. LAMBERT\*  
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