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Becoming a Good Apple

FEDERAL JUDGE ON THE UNITED STATES COURT OF THOMAS B. GRIFFITH APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PHOTOGRAPHY BY BRADLEY SLADE



afternoon. I'm grateful for this invitation to speak, and I'm mindful of the role I play. None of you is here because of me. I am here because of you. And although the dean is too polite to have told me directly, I have enough experience with graduations to know that the most important responsibility I have in the time that has been allotted to me is to *stay* within the time allotted to me.

Your role in this ritual is captured in this piece of doggerel, appropriately titled "Oh, My Aching Baccalaureate":

<i>The month of June approaches, And soon throughout the land, The graduation speakers Will tell us where we stand.</i>	<i>We stand at Armageddon, In the vanguard of the press. We're standing at the crossroads, At the gateway to success.</i>	<i>We're standing on the threshold Of careers all brightly lit, But in the midst of all this standing, We sit, and sit, and sit.¹</i>
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GO FORTH TO SERVE

*This address
was delivered
at BYU Law
School's gradu-
ation on 20
April 2012.*

First and foremost, congratulations to the graduates and to the families, loved ones, and friends who have made this day possible. Graduating from any law school is no small thing. Graduating from this law school is a mark of achievement that will follow you the rest of your lives. Although I can't remember the speaker at my law school graduation, I can remember walking down the Lawn at the University of Virginia, my wife and our four children cheering me on. Other than the day I was baptized, the day I was married, and a handful of family occasions, the day I graduated from law school was the happiest day of my life (until John Beck found Jonny Harline open in the end zone at Rice-Eccles Stadium, a joy later replaced by watching Jimmer destroy Gonzaga to advance to the Sweet Sixteen—you know, some things are just more important than others). I found law school to be a difficult labor, and on my graduation day I felt the sheer pleasure of relief! And so I congratulate you and encourage you to bask in this moment.

This invitation caught me in a moment of personal reflection because our youngest child, Tanne, will be starting her university life just a few months after you are finishing yours. The last several weeks have been filled with discussions between Tanne and me—all right, they haven't been discussions, they've been lectures—about how to make the most of university life. Those ruminations are too late for you. Besides, your presence here shows that you have mastered those lessons.

But it has struck me that Tanne and you represent different parts of the motto that marks the entrance to BYU and has no doubt been referred to repeatedly by graduation speakers across campus these last two days: "Enter to learn; go forth to serve." Tanne is about to enter—hopefully—to learn. And you are about to go forth—hopefully—to serve.

Although it is primarily about your future service that I wish to speak, allow me to ask you to reflect for a moment about what you have learned. I attended a conference at BYU a few years



ago at which President Henry B. Eyring—a prophet, seer, and revelator equally at home in the temple and the academy—offered a remarkable appraisal about the importance of universities.

“Universities have evolved over a long period of time,” he noted. “They are probably as good a way we know of to find truth.” Then President Eyring added something significant about this university, which I hope you sense. He said that he has told his wife that when he is gone, she should get a cottage near BYU “so she can see what God’s up to.” President Eyring continued, “He [has] had a soft hand on this university.”²

President Eyring taught us something important about university life in general and BYU in particular. Learning is an activity imbued with sacred meaning. As an undergraduate at BYU I heard the noted rabbi-scholar Jacob Neusner speak these words in the Marriott Center about the role of intellect in Judaism:

Skepticism and critical thinking are friends, not enemies, of religion. . . .

. . . Man is made in God’s image. And that part of man which is like God is the thing which separates man from beast: the mind. . . . When man uses his mind, he is acting like God. . . .

. . . The claim is that, in seeking reason and order, we serve God.³

I hope that the chief lesson you’ve taken from your university experience is the importance of using reason. I think it significant that during a six-week period in the spring of 1829, the Lord gave Joseph Smith four revelations in which He tutored His young charge about the Holy Spirit. In each of those revelations the Lord pointed out that the Spirit can be recognized only through the heart *and* the mind.⁴ A university experience, vigorously pursued, will train you how to think in ways that will serve you well in all your endeavors.

Harold Macmillan, prime minister of Great Britain and then chancellor of Oxford University, is reported to have quoted one of his Oxford professors, John Alexander Smith:

Nothing you learn here at Oxford will be of the slightest possible use to you later, save only this: that if you work hard and intelligently, you should be able to detect when a man is talking rot. And that is the main, if not the sole, purpose of education.⁵

With all your learning, the question becomes, How will you serve? First off, notice that the motto says “Go forth to *serve*”; it does not say “Go forth to *earn*.” That’s not to say we don’t want you to make money. We do, and unless you are living on a trust fund, you are no doubt more than a little anxious about earning a living that will provide for you and your loved ones. That is as it should be. But there is wisdom in this motto. Your challenge—and



mark my words, because much of your future happiness depends on this—is to use your career as a way to serve others.

In this regard, a career in the law presents unique opportunities with distinct challenges. A number of years ago I gave a talk titled, somewhat improbably, “Lawyers and the Atonement.” (The audience then had the same reaction.) The thrust of my remarks was not that lawyering works at cross-purposes with the Atonement of Christ—although the most casual observation will show that many lawyers do. It was my idea that, properly understood, the role of a lawyer is to help build communities founded on the rule of law. The rule of law is the idea—of staggering importance in the progress of humankind—that a community should not live according to the notion that might makes right. Rather, a community and its laws should reflect the reality that each person is a son or daughter of God and, by virtue of that fact alone, is entitled to be treated with dignity, respect, and fairness. By building communities based on the rule of law, lawyers are, in fact, participating in the redeeming work of the Savior at its zenith. To be sure, the working out of the Atonement occurs initially at the intimate level of a sinner realizing his need for God’s grace. But the Atonement of Christ, I believe, must also ultimately include creating a community based on the rule of law. Our Restoration scriptures suggest as much. Think of the city of Enoch, King Benjamin’s effort to unite his fractured people, and the 200 years of peace and justice achieved in the wake of Christ’s visit to the land Bountiful.

I know what you are thinking: this is *surely* an idealized view of lawyering. And I will concede that it is. As our own Jim Gordon has pointed out, “It’s true that some lawyers are dishonest, arrogant, venal, amoral, ruthless buckets of slime. On the other hand, it’s unfair to judge the entire profession by five or six hundred thousand bad apples.”⁶

Well, there are some good apples in that bunch. I will speak about three good apples who used their lawyerly skills to serve others. They are role models for all lawyers.

THOMAS MORE: “CHRIST’S INEFFABLE PASSION”

I start with Thomas More, the 16th-century martyr for the Catholic faith who was made the patron saint of lawyers and politicians. He must be one very busy man today. More’s martyrdom is portrayed with some artistic license in the movie *A Man for All Seasons*. (By the way, I am enjoining the dean from awarding a diploma to any student who has not yet seen that movie!) Some withhold admiration for More because of the unfortunate fact that in his defense of the faith he was complicit in the burning of heretics. My response: “Well, someone had to burn them!” I’m just kidding. Really. Let the record reflect that I am unalterably opposed to burning heretics. It is the wrong thing to do. Besides, Latter-day Saints would be among the first tied to the stake!

My admiration for More comes in part from his final words, spoken at his execution: “I die the king’s good servant, but God’s first.”

How was More able to make such a declaration and have it be true? A clue comes from his devotional life. Personal and family

prayer and the study of scripture provided the foundation for More’s daily life. And he took his greatest inspiration from a lifelong study of the suffering Christ endured during His atoning sacrifice. Early in his legal career More wrote, “[C]onsider how Christ, the Lord of sovereign power, Humbled Himself for us unto the cross. . . . Christ’s ineffable Passion [is] a strong defense against all adversity.”⁷

While imprisoned in the Tower of London and awaiting his death, More wrote about Christ’s suffering in Gethsemane. It was to be his final written work. “[N]othing can contribute more effectively . . . to the implanting of every sort of virtue in the Christian breast,” he wrote, “than pious and fervent meditation on the successive events of Christ’s Passion.”⁸

The following prayer, attributed to More, should be ours:

*Lord, grant that I may be able in argument, accurate in analysis, strict in study, candid with clients, and honest with adversaries. Sit with me at my desk and listen with me to my client’s complaints, read with me in my library, and stand beside me in court, so that today I shall not, in order to win a point, lose my soul.*⁹

Thomas More is a good apple because he focused his devotional life on the Atonement of Christ.

ABRAHAM LINCOLN: DILIGENT AND CAREFUL WORK

My next good apple is Abraham Lincoln—a safe choice, to be sure. Although much could be said about Lincoln as a role model for your service as a lawyer, I’ll mention only two things. The first may surprise you; the second is intended to make you uneasy. Lincoln, it turns out (and I’m quoting now from James McPherson),

was not a quick study but a thorough one. “I am never easy,” he said, “when I am handling a thought, till I have bounded it North, and bounded it South, and bounded it East, and bounded it West.”

Several contemporaries testified to the slow but tenacious qualities of Lincoln’s mind. . . . Horace Greeley noted that Lincoln’s intellect worked “not quickly nor brilliantly, but exhaustively.” Lincoln’s law partner William Herndon sometimes expressed impatience with Lincoln’s deliberate manner of researching or arguing a case. But Herndon conceded that his partner “not only went to the root of the question, but dug up the root, and separated and analyzed every fibre of it.”¹⁰

Your challenge—
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Who knew? Lincoln would have had a 3.3 GPA at BYU Law School! Fortunate for him, he didn't ever need to take law school exams.

But there is a great lesson for you in knowing this about Lincoln: Be careful and thorough in your practice of law. Swallow your pride and admit to the partner or senior associate or supervisor that it takes you time to get the right answer. I will confess that every big mistake I have made while practicing law—and I have made some big ones (the safety of a lifetime appointment allows that admission)—has come when I have cut corners because I was embarrassed to admit that I needed more time. On the flip side of that coin, every good thing I have done as a lawyer or as a judge has come when I took the extra time to get the answer right. So work hard and be careful. When you are serving others, much depends on that. As LaVell Edwards reminds us, “Far more important than the will to win is the will to prepare.”

Now to the part about Lincoln that is meant to make all of us feel a little uncomfortable. But don't worry: I'll bury the point beneath familiar and comforting phrases so that only those who dig hard will understand fully what I'm trying to say.

When it comes to our American experiment, Lincoln got it. He understood that this republic, with its powers separated among the branches and between the national and state governments, was “conceived in liberty”—an idea much celebrated today—but also dedicated to a proposition every bit as important and without which liberty doesn't mean much: “all men are created equal.” That is a profoundly radical idea—an idea

worth thinking about deeply and often; an idea with serious implications for how we think, how we act, how we treat others, and how we govern ourselves in any enterprise. It is an idea worth working for and giving one's life to. Lincoln did that, and he forever changed this land for the better. We have a ways to go, but Lincoln helped move us along the path. You must keep us moving down that path.

Abraham Lincoln is a good apple because he worked long and hard and carefully for justice.

REX E. LEE: KINDNESS AND CLARITY

My third good apple is Rex E. Lee, the founding dean of this law school. For those of us who knew Rex, putting him in the company of Thomas More and Abraham Lincoln is no stretch. And his life as a Latter-day Saint lawyer should have special poignancy for this group, even more than a 16th-century Catholic saint or a 19th-century American president.

When I came to BYU as its general counsel in 2000, it surprised me to learn that not everyone here realized just what a force for good Rex had been in Washington during his service as Solicitor General of the United States—the greatest lawyer job in the nation. Most of my legal career up to that point had been spent in Washington, and I was the beneficiary of Rex's reputation for excellence and goodness. When people discovered that I had some connection to him, as tenuous as it was, they immediately thought better of me than they should have.

The power of his reputation was brought home to me forcefully in 2002 when the Law School sponsored what was called the Rex E. Lee Conference on the Office of the Solicitor General. It fell to me to invite our remarkable speakers: every living former Solicitor General of the United States and other great lawyers who had worked as a solicitor general. No gathering like this had ever occurred. My pitch to the invited speakers was an easy one. The calls would go something like this:

“I'm Tom Griffith, the general counsel of BYU, and we are sponsoring a conference called the Rex E. Lee Conference—”

At that point the speaker would cut me off and say, “Yes, I'll come.” All they needed to hear was that the conference was named for Rex. These were Democrats and Republicans, federal judges, law professors, and partners at some of the finest law firms in the land. The group even included a future Chief Justice of the United States—John G. Roberts. And they all came because the conference was named for Rex Lee.

Now what can you learn from Rex Lee that will help you go forth to serve? Most important, in my view, is that Rex was a Church guy. He loved the Church. He and his family were always deeply involved in their ward. He held all kinds of callings, even when he was Solicitor General (you might call him “a home teacher for all seasons”), and he approached each calling with the same enthusiasm and care that he approached an argument before the Supreme Court.

There are two reasons being deeply involved in your ward will help you be a better lawyer. First, ward life compels you to work with and for people regardless of their station, and

lawyers have a special charge to be concerned with those without rank. Throwing yourself fully into the life of your ward will serve as an antidote to one challenge that comes from hanging around lawyers all the time: the tendency to think that our learning and training make us better than others. There are countless people who have a Rex Lee story, and it frequently involves Rex reaching out to someone who wasn't in a position to help Rex in return but who was just someone who needed help.

I count myself in that group. I did not know Rex Lee well. I had met him once or twice while returning to visit my home ward in McLean, Virginia, where the Lees lived while Rex was Solicitor General. During my second year of law school at the University of Virginia, the school's law review published my student note on the Bill of Attainder Clause of the Constitution. I sent a copy to Rex, knowing that he would be arguing a case before the Supreme Court that involved the clause. I had high hopes but low expectations that my note might draw a citation in the government's briefs.

A few weeks later Rex sent me a letter inviting me to be his guest at oral argument. As it turns out, the date of the argument conflicted with some inalterable commitment. Thinking back, I can't imagine what that conflict would have been. I sent my regrets. A week later there was a letter for me from the Solicitor General in my mailbox in the offices of the law review. As one might imagine, the letter caused a stir among my colleagues. They gathered around as I opened and read: "Dear Tom, I am sorry that you are unable to come to oral argument. We have talked it over in the office and decided that we will have to proceed without you anyway. Best wishes, Rex."

Second, being fully invested in your ward the way Rex was will help you learn how to communicate clearly. That skill alone will put you in the 99th percentile of lawyers, most of whom hide behind jargon that few understand, including judges on the D.C. Circuit. The very first time I set foot in any courtroom, I was a third-year law student and the guest of Rex Lee in the Supreme Court. I had come to see him argue. You see, after I was unable to accept Rex's invitation to see him argue the Bill of Attainder case, he called me the next year and asked me to be his guest at another argument. Needless to say, I was very excited. I can't remember the case, but I remember that Rex's opponent that day was a law professor. And the law professor was really good—I mean really good. I knew the law professor was brilliant because I couldn't understand a thing he was saying. He was just like my brilliant law professors whom I couldn't understand either.

Then Rex stood at the podium. My excitement soon turned to disappointment. I was embarrassed for him. I can still remember my sinking feeling. "This is the Solicitor General of the United States arguing before the Supreme Court, and he's just awful," I thought to myself. "I can understand everything he's saying." When Rex argued I didn't feel like I was in the Supreme Court. I felt like I was in a Gospel Principles class.

As a third-year law student, I didn't understand that Rex Lee was such a great lawyer because he made oral argument before the Supreme Court feel like a Gospel Principles class

and not a philosophy class deconstructing Kant. Rex Lee was a great lawyer—many think he was the finest Supreme Court advocate of his or any generation—because he was a great teacher. He could take complex ideas and make them understandable. How did he develop that skill? How can you? That takes practice and hard work—and lots of time in the Primary and Mutual.

Thomas More, Abraham Lincoln, Rex Lee: three great apples. Now it's your turn.

Congratulations for what you have learned. Go forth to serve.

NOTES

- 1 Laurence Eisenlohr, *quoted in* Boyd K. Packer, *What Every Freshman Should Know*, ENSIGN, Sept. 1973, at 32.
- 2 Sharon Haddock, *LDS Leader Speaks on Learning, Religion*, DESERET NEWS, Feb. 28, 2009.
- 3 JACOB NEUSNER, *THE GLORY OF GOD IS INTELLIGENCE: FOUR LECTURES ON THE ROLE OF INTELLECT IN JUDAISM* 1, 2, 4 (1978).
- 4 Doctrine and Covenants 6:22, 23; 8:2; 9:7–9; 11:12, 13.
- 5 *Quoted in* Larry H. Peer, *BYU devotional address: Beethoven's Kiss: On the Odd Reasons for Brigham Young's Excellent University* (Dec. 2, 2003), available at <http://speeches.byu.edu/reader/reader.php?id=4530>.
- 6 James D. Gordon III, *The Profession Everyone Loves to Hate*, CLARK MEMORANDUM, Fall 1996, at 10.
- 7 Thomas More, *from* THE LIFE OF JOHN PICUS, *quoted in* GERARD B. WEGEMER, *THOMAS MORE: A PORTRAIT OF COURAGE* 25 (1995).
- 8 Thomas More, *from* THE SADNESS OF CHRIST, *quoted in* WEGEMER, *supra* note 7, at 208–09.
- 9 *Quoted in* Ave Maria School of Law Applicant Information Booklet (2003).
- 10 JAMES M. MCPHERSON, *TRIED BY WAR: ABRAHAM LINCOLN AS COMMANDER-IN-CHIEF* 2–3 (2008).

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