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In Memoriam: John M. Brumbaugh

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Howard S. Chasanow, Frederic N. Smalkin, Susan Leviton, Tanya Washington, Edward S. Abrams, and Alan D. Hornstein



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JOHN M. BRUMBAUGH

The editors of the *Maryland Law Review*
dedicate this issue to the memory of
Professor John M. Brumbaugh.

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In Memoriam: John M. Brumbaugh[†]

HOWARD S. CHASANOW*

Trying to compose what to say here today, while suffering from the same sense of shock and unreality that grips our entire nation following the September 11 attacks, I was struck by the duality of the occasion. We are here to memorialize a wonderful man and a wonderful teacher, but we remain conscious of the horrible tragedy that struck our country, and we also grieve for the as yet uncounted people so needlessly slaughtered. There is another duality in our gathering here today. We come together both to mourn the death, and celebrate the life, of John Brumbaugh. All of us feel sorrow for Professor Brumbaugh's wife and family, and for ourselves for his loss, but we also feel happy to have known him.

It has been suggested that we can measure people's accomplishments by assessing the impact they left on their communities. By this or almost any other yardstick, John Brumbaugh's accomplishments were colossal.

A former Dean of the University of Maryland School of Law observed that in John Brumbaugh's over four decades as a faculty member he taught more Maryland lawyers than any other faculty member in history. The Dean further opined that no other law school professor has had as much impact on the lawyers of Maryland.

Certainly in my case, no other teacher that I ever encountered had more of an impact on my life. Professor Brumbaugh instilled my enjoyment of the subjects of criminal law and evidence, challenged me and assisted me in getting my masters of laws degree from his

† These comments are based on remarks made at the Memorial Tribute to John M. Brumbaugh, held September 13, 2001, at the University of Maryland School of Law.

* Judge (retired) Court of Appeals of Maryland.

Alma Mater—Harvard Law School, and inspired me to a life-long career, albeit part time, of teaching law.

There is no doubt that Professor Brumbaugh challenged and inspired every student he taught. He was the acknowledged master of the Socratic method. His teaching evidenced his brilliance, skill, and passion for the law, as well as his wicked sense of humor. We paid very close attention to Professor Brumbaugh's lectures not only for their content, but also because we did not want to miss any of the subtle, wry witticisms that otherwise might have gone unnoticed.

Sometimes in law school when you answer a professor's question, you can tell immediately if the answer you gave was right or wrong. If the professor is smiling you know you were wrong. Not so with Professor Brumbaugh. If you gave a wrong answer, it pained him and he made you feel that your inadequate knowledge not only reflected badly on you, it also reflected badly on him because it indirectly impugned his teaching. He expected the best from his students and inspired us to live up to his expectations. Professor Brumbaugh's goal was not to get students through law school, it was to produce good lawyers. And he did it well.

It was fitting that John Brumbaugh would meet Alice, the love of his life, in a law school, and that she would be someone who shared his devotion to the law and love of teaching. Theirs was a match made in heaven, but nurtured in law school.

Several years after I finished law school, Professor Brumbaugh and I became friends and colleagues both at the law school and on the Commission to Revise the Criminal Code, as well as on several professional committees and law clubs. Time and time again he asked me to call him John. But I could not do it. He was PROFESSOR Brumbaugh and would always be Professor Brumbaugh to me. It was not because he was aloof or imperious, it was because my profound respect and admiration for the man simply would not permit me to address him as anything less than Professor Brumbaugh.

Professor Brumbaugh will be missed, but his immeasurable contributions to his profession will assure he will not be forgotten.

FREDERIC N. SMALKIN*

“BEATI QUI LUGENT: QUONIAM IPSI CONSOLABUNTUR”

“Blessed are they that mourn: for they shall be comforted.”

* Chief Judge, United States District Court, District of Maryland.

In these elegant words—which, in deference to John’s passion for things ancient I have said as they would have been in the Middle Ages—we are promised that those who mourn will be comforted. One of the sources of comfort we can take upon the loss of someone close to us is a celebration of his life and gifts. This, we do this afternoon.

I am humbled and grateful to have been asked to speak this afternoon in celebration of John Brumbaugh’s life and gifts. Thank you, Alice, for this opportunity.

I say John’s “gifts” purposefully, for, in doing so, I speak both of the gifts God gave him and those John gave all of us, especially the thousands of us who were privileged to benefit from the special gift John had for teaching the law.

When I first heard of John’s death, I had an experience that I have come to have all too many times during my lifetime, and perhaps some of you have had similar experiences. I call them ghosts—vivid pictures from the past flashed before my eyes, almost indistinguishable from present sensation.

I instantly saw him as he stood, more than thirty years ago, in front of Room 301 in the old (but not the very old) Law School, delivering a lecture on criminal law—tall, a big man, but not at all obese. Always immaculate, he was dressed in a dark blue suit, groomed with care from his polished shoes to his well-combed hair. He was professional to the core.

John’s immaculate appearance was reflective of an immaculate mind. Perhaps the better word would be an elegant mind, if elegance in the law be defined as clarity of thought and the ability to express one’s self in the fewest words needed to get the point across. Elegant thought is, I think, a *sine qua non* not only of the effective lawyer, but of the effective teacher. The ability to distill complex principles of law into digestible nuggets is a gift given only to a few—the ability to teach the law that way is given to fewer still. John had that gift, and how!

His was an imposing presence, to be sure, in the classroom, and his exactness of thought, as well as the corresponding exactness of thought he expected from his students in response to challenging questioning, combined to induce some anxiety on the part of a few students. John knew that, often, a touch of anxiety sharpens the mind, and, for most students called upon, the desired effect was achieved. After all, ours is an anxiety-producing profession, especially in the application of criminal law and evidence law—John’s favorite subjects—and a teacher doesn’t necessarily do a student a service by shielding her from the anxiety that comes from being put on the spot

by a sharp questioner. (I've been told some judges induce similar anxiety, but I don't have any idea who they are.) To sum it up, in the classroom John was imposing, but never overbearing. He was a pedagogue, in the noblest sense of the word, but never a pedant.

Another picture of John popped into my mind, this at the 14 West Hamilton Street Club, a favorite of John's and mine. There, his natural bonhomie, his wide knowledge of the world (especially its history), and his broad intellectual curiosity were on display, but never overtly. Within the unimposing walls of the Hamilton Street Club, he could relax and enjoy the company of people of some achievement not only in the law, but from virtually every learned profession, sharing good food and the occasional glass of wine. There, one perceived that John was indeed learned, but never boastful.

And, finally, I could see John as he was the last time I was with him, at Joel Woodey's retirement celebration. On display that afternoon was John's wonderful ability to be humorous, but never sarcastic or belittling. His sense of humor was subtle, but unmistakable. In fact, John's ability to revel in a pun or some other humorous tidbit was one of his most memorable and endearing traits. His sense of humor was, again, a gift given only to a few—the rare ability to be keenly witty, but never at anyone's expense. And, on that last occasion when I saw them together, as always, I could see and almost feel the mutual devotion that he and Alice shared. Theirs was a remarkable, loving relationship, which only a fortunate few experience in this lifetime.

I close, at this painful moment in our Country's history, when we are especially mindful and appreciative of all those who serve and have served, by remembering John's service in the United States Marine Corps. To be sure, I do have a little trouble seeing John as a lean, mean Marine, but I know he served proudly in the Corps. I have to admit that, as an Army veteran, I have always harbored a secret envy of those who can claim the Marine Corps Hymn as their own, as could John. And I leave you, and John, with its concluding words:

If the Army and the Navy
Ever look on Heaven's scenes,
They will find the streets are guarded
By United States Marines.

SUSAN LEVITON*

As we gather here today, I thank you for giving me the opportunity to remember and celebrate John Brumbaugh with you. I was fortunate to know John Brumbaugh as a teacher, colleague, and friend. Everyone who knew John knew that he was a superb teacher. He had a keen mind, was dedicated to excellence, taught his students the importance of preparation and thoughtful analysis, and cared about his students. But John had the ability to teach much more than Evidence and Criminal Law. In fact, some of the most important lessons I learned from John.

First, John had the tremendous ability to separate ideas he disagreed with from the people who proposed them. As you all know, John was not the greatest fan of clinical education. Yet, he was always respectful of people who taught in the Clinic. In fact, John is responsible for creating an environment at the Law School which we can all be proud to be a part of. He was instrumental in creating a warm and respectful environment. He did this, however, while never mincing words, being direct, and speaking his own mind. He also did this in an ever changing environment. When John first began teaching at Maryland in 1956, there were only seven faculty members—all of whom were white men. Today, our faculty and our student body is truly diverse with many different perspectives on legal education. Yet, it is an environment where people feel free to express their differences. This is largely because of John.

Second, John taught me what I am sure Oscar Wilde taught him, which is “[i]t is always a silly thing to give advice, but to give good advice is absolutely fatal.” John was the reporter in 1974 of the Brune Commission, which proposed a 586 bill to reform Maryland’s criminal code. Even though this report was filled with John’s brilliant and insightful comments and ideas, the legislation was roundly defeated. But John taught me another important lesson, which is never to give up. And over the years, a number of bills based on the report were enacted, which made substantial improvements in Maryland law.

Third, John taught us about the gift of invigorating speech and great debate. John, being the senior member of the faculty, was always the first to comment on most matters. His speech was always clear, direct, and to the point. However, he used speech to try to draw people closer together, to connect with others and to exchange ideas and not to put people down. As Thomas Mann wrote, “[s]peech is

* Professor of Law, University of Maryland School of Law.

civilization itself. The word, even the most fractuous word, preserves contact, it is silence which isolates.” John understood that only through speech could we confront each other’s ideas and negotiate the differences.

Finally, by watching John and Alice Brumbaugh, we were able to observe what are the necessary ingredients to building a beautiful and enviable marriage. Their marriage was characterized by a deep, caring relationship, genuine loving companionship, while also allowing both parties to retain their individuality.

When someone dies suddenly, as John did, we are filled with despair and discouraged because we realize nothing lasts. But here maybe John taught us the most important lesson. And that is to learn to savor the moment even if it does not last forever. As John taught us, life isn’t just about writing the greatest book or amassing the greatest wealth or power. It’s really about people caring for others and having others care for you. It’s about enjoying the moment and making time for each other. That is the definition of a successful life. And John certainly lived one. As Harry Emerson Fosdick stated, success is:

To laugh often and much; to win respect of intelligent people and the affection of children; to earn the appreciation of honest critics and endure the betrayal of false friends; to appreciate beauty; to find the best in others; to leave the world a bit better, whether by a healthy child, a garden patch, or a redeemed social condition; to know even one life has breathed easier because you have lived.

This is to have succeeded. We thank John for teaching and modeling for us how to lead such a successful and joyous life. Thank you.

TANYA WASHINGTON*

I am a former student of the late Professor John Brumbaugh and a visiting faculty member at the University of Maryland School of Law. I am honored to be here this afternoon to share with you some sentiments inspired by Professor Brumbaugh’s work, his life, and his passing.

There is an African conception of the cycle of life and death, which intuits that no one truly departs from this world until they are no longer remembered. I remember Professor Brumbaugh. He was

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my first year criminal law professor. I can recall him clearly, gracing the stage before the class shuffling those infamous flashcards that contained my name and those of my classmates, while we nervous first years held our breath terrified that our name would be the next one he would call. It became clear as the semester progressed that he perceived his purpose as a law professor to be not merely teaching us the legal rules, principles, and standards relevant to criminal law, but also to educate us as to the meaning of law in its human dimensions and to share with us his passion for law's pursuits. Like the thousands of other students who have studied law under Professor Brumbaugh's direction during his many years of teaching, I was inspired to perceive the law as more than just a set of rules. I grew to appreciate that its true value lies in the manner and extent to which it informs the human condition. It is that conception of the law that I now endeavor to pass on to my own students.

I remember Professor Brumbaugh as an institution within an institution. He was the subject of many of the stories passed down between generations of students. He often told stories about former students and former colleagues at the law school that helped us to appreciate what a special place the University of Maryland School of Law really is. We marveled at his allegiance to the school and were impressed by the nature of his contributions to the dynamic learning environment it provides.

I remember Professor Brumbaugh as a man who left his footprints behind. When I first accepted my position at the law school and was informed that I was being placed in his former office, I must admit that I was more than a little intimidated. Here I was at the beginning of my teaching career, surrounded by the affects and memory of one who had achieved so much during his career. As I studied the gallery of pictures that decorated his walls, I sensed the spirit of vibrancy that pervades the office. And as I sit in Professor Brumbaugh's big comfortable chair (with my feet up!), I am inspired rather than intimidated by the scope and nature of his achievements because I know that one of the things that characterizes his legacy is his commitment to sharing his love of the law with his students and his colleagues.

Of all of the ways that I remember Professor Brumbaugh, my most treasured memories involve his loving relationship with his wife, Professor Alice Brumbaugh. We saw them as a team. All of us had at least one of the Brumbaughs during our first year, and the lucky ones, myself included, had both of them. In the old building, their offices were right next door to each other, and it was so sweet to see them

entering and leaving together, their lives, personal and professional, so intertwined. It goes without saying that the loss Alice feels is commensurate with the depth and breath of the relationship they shared. I offer these words of comfort:

Professor Brumbaugh lived his legacy as a scholar, an educator, a husband, and a friend. We are better for having encountered him and are grateful for the experiences that we shared with him. He will not be forgotten as his memory will live on in the students he educated, the ideas he conceived, the institution he enhanced, the colleagues he inspired, and the many lives he touched. Teaching, thinking, and learning—he would have loved these three above all else, had he not loved Alice more.

EDWARD S. ABRAMS*

We are gathered here to remember and celebrate the life of Professor John M. Brumbaugh, affectionately referred to, outside the classroom, as John by the thousands of students he taught. I remember being a first year law student in Professor John Brumbaugh's criminal law class. Specifically, I remember how the various forms of larceny, larceny by trick, larceny by deceit, false pretenses, and theft by bailees maddened me. In preparing my remarks for today, I revisited my notes from first-year criminal law and more importantly Professor Brumbaugh's casebook entitled *Criminal Law and Approaches to the Study of the Law*. I find it important and appropriate that the latter part of the title refers to the general approach to law study rather than any specific approach to the study of criminal law.

For those of you who have a copy of this text, I encourage you to go back and reread it. In my rereading I focused and spent more time trying to ascertain the author's intent and what the author wanted the reader to take from the pages. I encourage all of you to undertake this similar exercise, focusing less on the elements of specific crimes and more on the history in which our values and morals are distilled into our system of jurisprudence, which we know as the common law. Some of us tend to gloss over the historical notes to get to the meat of the issue, not realizing that the historical background is the skeleton upon which the cases are framed. While rereading passages in his casebook a light went on in my head, and I began having an experience where I said, "oh this is what that meant, or this is what he was

* University of Maryland School of Law, Class of 2002.

trying to get at that day.” It is the light that goes on when you know that you know it! It was that light that Professor Brumbaugh sought to turn on and inspire in each of his students.

Professor Brumbaugh believed that every lawyer should know something about the history of his or her calling. In fact, he wrote these very words in his casebook. As all great professors realize, Professor Brumbaugh knew that answers to legal questions require a deeper understanding of the law that cannot be acquired through rote memorization. Professor Brumbaugh knew that a good lawyer had to know about the larger societal and historical context in which principles of right and wrong, fairness, and justice become law.

Through the Socratic dialogue, Professor Brumbaugh tried earnestly to instill in his students an appreciation for the legal culture and the respected profession of the law. He further wrote in his case book that law students were the inheritors of this legal culture and its history, “that great lawyers and great cases of the past help put the issues of today in context and add color and life to legal study.” These are the words of John Brumbaugh.

Many of us who were privileged to be taught by Professor John Brumbaugh share a special kinship and bond akin to membership in a fraternity, where one meets members who can identify with similar experiences and recount with amazing accuracy the details of cases, points of law, and idiosyncrasies absent from any other law school classroom, but ever present through decades in the classroom of John Brumbaugh and in the hearts and minds of his students. I cannot count the number of times I have met alum from decades past who ask the question, “Who did you have for criminal law?” And I reply “Professor Brumbaugh.” And the respondent replies faithfully “John or Alice?”

For many of you familiar with this casebook, who could forget the notable justices who drafted many of the cases. Such notable jurist sitting on the Supreme Court of Ohypo as Chief Justice Wynken and his antagonistic fellow Justices Blyken and Nod, who authored dissenting opinions aimed at showing the intricacies and complex issues of every fact pattern. Who could forget the Fisherman’s case, or Pear’s case, or concepts like breaking the bulk or asportation? Your familiarity with these phrases and concepts is clear and convincing evidence that Professor Brumbaugh’s teaching and professional goals were successfully obtained: that we, the inheritors of legal culture and legal history, understand the broader context of societal problems, the questions that are generated by open dialogue, and the solutions that evolve from bringing great minds together. Professor John M. Brum-

baugh is a part of our legal culture and our legal history, and we embrace and keep his goals that those who follow us inherit his understanding and passion for the law.

In closing, this casebook has one more thing that was probably glossed over by many. If you open to the dedication page, it reads simply "*To Alice.*" To those who don't know them, these words merely reflect ink on paper. But to the thousands of us who share our specific legal history and culture as Maryland law students, the words are telling of much more. Concisely and with sheer brevity these words connote more than a thousand words can describe. A life of one's work dedicated simply "*To Alice.*" Professor Alice Brumbaugh, our hearts are with you and your family.

ALAN D. HORNSTEIN*

I can still remember the first time I met John Brumbaugh. It was February of 1972, and I had come to the University of Maryland School of Law, young and callow, looking for a job. John was one of the members of the faculty who interviewed me. I thought him a trifle formal, but was impressed with his candor and with his charm, and the way in which the charm tempered the candor.

In the almost thirty years that followed, I never saw any reason to change that assessment, though I came to appreciate it and the wisdom—and especially the benevolence—on which it rested. What was extraordinary about John was not just his willingness to say exactly what he thought without hedging or qualification; it was the good grace with which even the strongest disagreement was *received* by those against whom it was directed, whether student or colleague or friend. And I should note that I consider myself in all three categories. I think the reason for that characteristic reaction was that we understood, those of us who were the targets, that it was not personalities but ideas that were at the root of his often witty and always telling barbs.

John and I disagreed about a lot. And we argued a lot. And neither of us pulled any punches. We fought about things worth fighting about—the education of the next generations of lawyers, the future of the law school. Despite those battles, there was never a moment when I doubted John's affection and respect, and I hope and believe there was never a moment when he doubted mine. Nor was

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there a moment when his commitment to his view of the best legal education possible and his loyalty to the University of Maryland School of Law was in the slightest questionable.

I don't think I ever knew anyone about whom it could more truly be said that he could disagree without being disagreeable.

He was an extraordinarily generous colleague and friend. Some years ago, when I decided it might be interesting to teach Criminal Law (in part because John seemed to have so much fun teaching it), he was immediately there with offers of his notes, suggestions about books and approaches, reports of what worked and didn't work in his years of teaching the course.

He was far more creative a teacher than his manner might have led one to believe. His casebook, *Criminal Law and Approaches to the Study of Law*, is a remarkable piece of creative work in a field that is generally barren of creativity. It uses the material of the criminal law—cases, statutes, commentary—to illuminate legal doctrine. But it does not stop there. It uses this material to illuminate as well the different ways that one might understand the law. John used the law of theft, for example, as a vehicle for exploring law from the perspective of its historical development; he used other topics to illuminate other approaches to understanding the law more generally.

No matter how many times he may have taught a course, he continued to work hard on his classes. He was especially adept at the telling hypothetical, with an extraordinary sense of what worked and what didn't work. He knew what follow-up questions to ask in order to zero in on precisely where a particular student needed help.

What many in the current law school community may not know about John is that he was in his time something of a revolutionary, championing the institution of the seminar against stiff opposition, when law school classes were uniformly taught in lecture halls.

So far, I have been talking about John as a member of the law school community—and that part of him was certainly immensely valued by all of us who shared it. But, if you'll indulge me just a few more minutes, I'd like to say a few words about John outside the context of the law school. For despite his love of law teaching and his special commitment to the University of Maryland School of Law, there was much more to John than that.

He was an avid theater-goer, with an encyclopedic knowledge of drama. He loved good music and was a regular at the symphony. He liked the opera. He had a special fondness for Gilbert & Sullivan. John was a great fan of mystery novels, and we shared a special fondness for Rex Stout's Nero Wolfe stories.

He admired the graceful use of language, and was especially adept at it. The puns in the Faculty Lounge were never more pun-ishing than when John participated. He was a sort of poet-laureate of the School of Law. There was scarcely a major event during his tenure that was not marked by a Brumbaugh poem. And it does not denigrate his talent in this specialized area of expertise to say that his model was more Ogden Nash than William Butler Yeats. He was a great admirer of Nash—I think because he used language so cleverly.

John collected maps. And I always found this faintly ironic. For there were few people as sure of where they were going as John, and of how he wanted to get there. Alice, of course, was his common sojourner as well as the star by which he steered. Though they found each other later in life than some, they made up for that with a shared devotion that was truly impressive. To share a working life and then go home together every night and not grow tired or bored, to remain each others' best and dearest friends—that can make up for a late start.

Nothing of course, can make up for John's untimely demise. All we can do is to share in the loss, but also to share in the celebration of a life well lived, and to remember that for those of us in the law school community, for generations past, and through them and us, for generations to come, he was a teacher. He touched the future. He will be remembered.