

## Tributes to Professor John M. Brumbaugh

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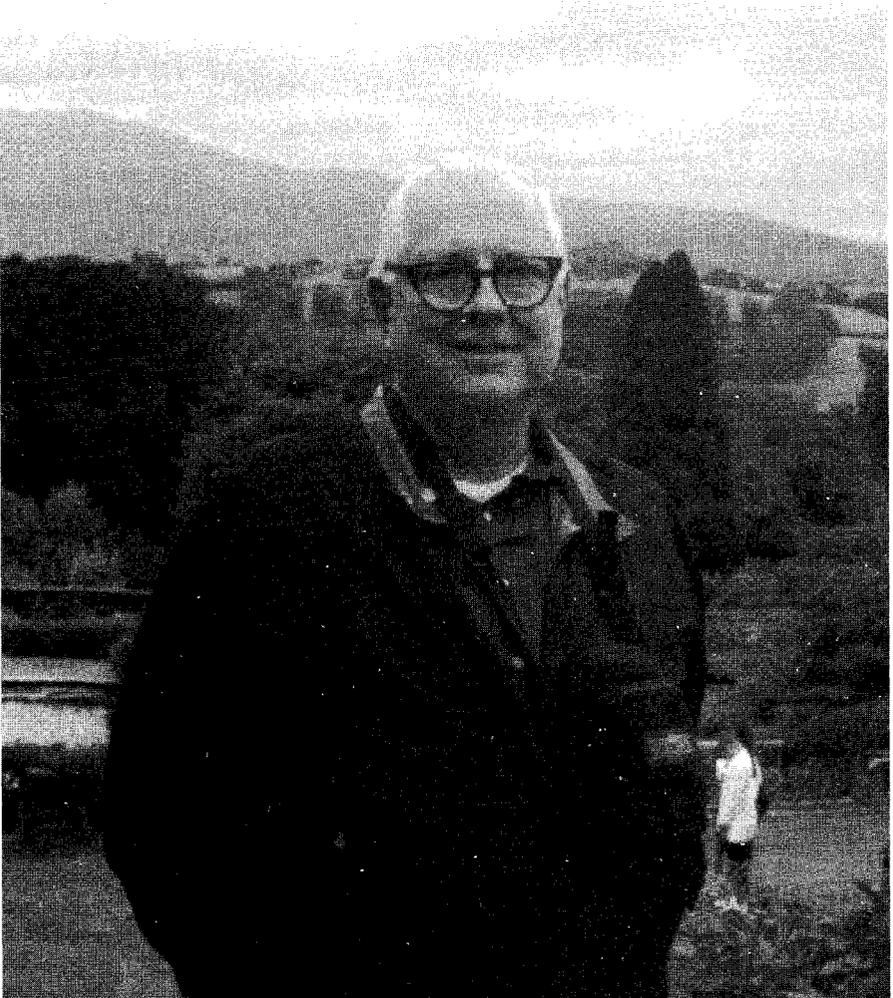
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JOHN M. BRUMBAUGH



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## Tributes

### TRIBUTES TO PROFESSOR JOHN M. BRUMBAUGH

BENJAMIN L. CARDIN\*

John Brumbaugh has been an outstanding professor of law in the areas of criminal law, evidence, trademarks and unfair competition, and patent law. He has authored *Cases and Materials on Criminal Law and Approaches to the Study of Law*, and his expertise in these areas of the law has gained national recognition. On the eve of Professor Brumbaugh's retirement after forty years of teaching students the intricacies of the law, I would like to pay tribute to one of the most outstanding, energetic professors under whom I ever had the pleasure of studying. In fact, Professor Brumbaugh made such a lasting impression on me that I still can recall the exceptions to the hearsay rule more than thirty years later.

Clearly, some of my fondest memories of law school (and most horrifying) come from my experiences with Professor Brumbaugh. While drumming the rules of evidence into our brains, he taught all of us to expect the unexpected. Now that I have had the opportunity to serve as a member of the United States Congress, I can attest to the fact that what we as law students believed were strictly weird hypotheticals that only Professor Brumbaugh could dream up actually do occur in the real world.

First and foremost, Professor John Brumbaugh is a person dedicated to excellence in education. He has devoted his life to educating generations of lawyers, and it is no surprise that the University of Maryland School of Law has gained well-deserved national recogni-

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\* United States Representative, Third Congressional District, Maryland.

tion from Professor Brumbaugh's expertise. His wit, inspiring command of the subject, and interesting manner of presentation all have served his students well over the years.

Professor Brumbaugh has instilled his concept of the law into thousands of students, who remember his challenging mind with a deep affection, mingled with fear. As we struggled to fully understand his demanding hypotheticals, along the way we gained a special appreciation for the law. In addition to teaching his students the subtext of the law, Professor Brumbaugh also emphasized the need to be prepared. That lesson certainly has served me well throughout my career.

Professor Brumbaugh's articulate presentations could be riveting, even after a full night of studying and little sleep. Just when you thought you understood where the Professor was going with a case, he had the ability to turn the case on its head. At times, many of us undoubtedly were astounded by the twists a case could take under Professor Brumbaugh's tutelage, but we learned to appreciate the need to be prepared—and then prayed that he didn't call on one of us.

I want to extend my warmest wishes to Professor Brumbaugh on his retirement. But if my memory serves me well, Professor Brumbaugh will not be retiring in the strictest sense of the word. In reality it is really not possible to retire a fine mind and intellect, and that is certainly what Professor John Brumbaugh represents to all his students.

#### HOWARD S. CHASANOW\*

Mulling over which law school faculty member had the most profound effect on my legal career, I am convinced it was Professor John M. Brumbaugh. His obvious enthusiasm made evidence and criminal law intriguing subjects and motivated many of his students to pursue careers and further studies in these areas. My fellow students and I paid close attention to his lectures, not just for their content, but to avoid missing the subtle, wry humor that otherwise might have gone unnoticed.

Professor Brumbaugh's examinations evoked a mixture of fascination and terror. More than three decades later some of these exam questions still come back to me when I go to sleep too soon after eating an anchovy and sausage pizza. One sample examination question that I can still recall vividly is a good indication of the compre-

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\* Judge, Court of Appeals of Maryland.

hensiveness of Professor Brumbaugh's lectures and examinations. Old age may have made me forget some minor details, but not many. I remember the examination question as follows:

A homeless man, *A*, was walking down a country road when it began to rain. *A* sought shelter in an old barn on *B*'s farm some distance from the farmhouse. The roof of the barn was leaking, so *A* removed newspapers and rubbish from an old wooden trunk, which he found in the barn, put them out of sight, crawled into the trunk, and fell asleep. A little while later *B* and his hired hand moved the trunk from the barn into the cellar of the farmhouse. Unknown to anyone else, *B* planned to use the trunk full of rubbish as fuel for the fire he intended to start, so that he could burn down the farmhouse and collect his fire insurance.

*B* sent the hired hand away and then set up a timing device that would start a fire near the trunk. *B* then went up to his bedroom, leaving the cellar door opening into the kitchen partly open to improve the draft, and waited for the odor of smoke, at which signal he planned to rouse his family so that they could escape. After *B* left, *A* got out of the trunk, noticed the timing device and, guessing its purpose, climbed the cellar stairs silently to see what he could steal. In the kitchen, *A* discovered *C*, the farmer's 30-year-old daughter, making cocoa. *A* told her to "come here." *C*, too frightened to cry out and fearing that *A* might kill her if she struggled, replied: "I can't resist you," removed her nightgown, and submitted to intercourse.

Meanwhile the cocoa boiled over, seeped through the kitchen floor, and short-circuited *B*'s timing device, setting off the fire several hours earlier than *B* had anticipated. The house burned down. Although those in the house escaped safely, a fireman and a pilot burned to death when they tried a new fire-fighting technique from the air and the engine of their helicopter failed, causing them to fall into the fire. Discuss the common-law felonies that have been committed.

That question truly continues to haunt me. To this day, I remain unsure of the answer, but I am still studying.

Professor Brumbaugh was a natural teacher. When he took his place at the front of the class, you could tell he was in his element and was enjoying it. His goal was not just to get students through law school; it was to produce good lawyers. He took a keen interest in his students' education as well as in their potential legal careers. Many of us profited by his sage advice and helpful career suggestions. He convinced me that I ought to pursue graduate studies in law at his alma

matter, Harvard University, and assisted in my gaining admission to that venerated institution. Professor Brumbaugh was always available to answer questions, give advice, and offer suggestions. He was so helpful and knowledgeable that many of us continued to pester him for advice about intriguing criminal law and evidence problems long after graduation.

Our class was one of Professor Brumbaugh's first. Teaching conditions in those days were less than adequate. At that time, the law school was located in an old building next to the medical school and lacked air conditioning, so in warm weather the windows were kept open. We could hear the dogs howling from the medical school a few yards away as vivisection experiments were carried on, but Professor Brumbaugh maintained our rapt attention in spite of that distressing distraction.

Professor Brumbaugh's activities on behalf of the legal profession extended beyond the law school. For example, he served as reporter for the substantive provisions of the Kenney Commission (formerly the Brune Commission) charged with drafting a comprehensive new criminal code. The Commission's proposed code was not adopted because of concern about its novel sentencing provisions, but Professor Brumbaugh's work on the substantive provisions was not in vain. That proposed code was a primary source for the recent revisions of the theft, breaking and entering, and arson sections of Maryland's criminal code. It is still being used as a major source for the work of the current Article 27 Revision Committee.

In his four decades of teaching, Professor Brumbaugh has left his mark on a significant part of Maryland's legal community. My small law school class of less than four dozen people includes a former Attorney General of the United States, the first chair of the State Ethics Commission, the first chair of the Maryland Stadium Authority, many highly respected lawyers, and several district court, circuit court, and appellate judges. One thing we all have in common is our deep admiration and respect for Professor John M. Brumbaugh.

JOSEPH F. MURPHY, JR.\*

If imitation is the most sincere form of tribute, I have been paying tribute to John Brumbaugh since January 1974. I continue to teach evidence the way I learned that subject from John nearly thirty years ago. No evidence teacher can improve on his explanation of the

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\* Judge, Court of Special Appeals of Maryland.

hearsay exception for statements of present intent (“I am going to the movies with Frank this evening.”), or on his demonstration of how difficult it can be to distinguish between fact and opinion (“Ms. Witness, did the whistle blow?”). I even use some of his jokes (“Mr. Plaintiff, please show the jurors how high you were able to lift your arms *before* the accident!”). Professor Brumbaugh’s evidence course was excellent preparation for the courtroom.

I recall as if it were yesterday John’s energetic greeting to the evening division class that entered the law school in the fall of 1965. Our orientation was held in the auditorium of what is now the School of Social Work. After we heard welcoming remarks from Dean Cunningham and several other professors, John inspired us with a talk that focused on the exciting aspects of law practice, and he admonished us to “hang in there” when we found the courses required early in the program to be less than stimulating. His good cheer and enthusiasm made us anxious to get through the boring material and move on to the more interesting courses. When we got there, we were not disappointed.

In the spring of 1969, John taught the professional responsibility course to an eclectic and distracted crew of evening division students who began the semester much more concerned with cramming for the bar examination than with exploring variations on the golden rule. Professor Brumbaugh, however, presented the material in a way that provided us with excellent examples of how ethical issues arise in the practice of law. He got us ready to practice law the way it should be practiced.

John’s skill as a classroom teacher cannot be overstated. He is a master of the casebook method; his questions frame the issue clearly and lead ultimately to a method for resolving the problem that students can understand and apply successfully thereafter. Because of his quick wit and mastery of the subject, John appeared to the students as a very imposing and intimidating figure. Yet, he was never harsh with an unprepared student. There were, however, very few unprepared students in his courses. John’s ability to engage students in a thought-provoking dialogue made us prepare more intensely for his class than for most of the other evening division classes. Lawyers who were privileged to be students of Professor Brumbaugh understand and appreciate the importance of preparation.

I regret to this moment that my evening division class could not take John’s criminal law course. He is a celebrated expert in that field. His contributions to the legal literature include a casebook and much of the two volume “Brune Commission” Report and Proposed

Criminal Code. Officially titled the "State of Maryland Commission on Criminal Law," the Brune Commission was named in honor of the Honorable Frederick W. Brune, a former Chief Judge of the Court of Appeals of Maryland, who was its chairman from 1965 until his untimely death in 1972.

Shortly after the President of the Senate and the Speaker of the House appointed me chair of the present Committee to Revise Article 27, I obtained copies of the Brune Commission's work product, as well as the 586-page bill submitted on November 25, 1974 that would have implemented the recommendations in their entirety. Even though its proposed code was not adopted by the General Assembly, the Brune Commission was responsible for a number of bills that were enacted and that made substantial improvements in Maryland law. Of greater significance to our contemporary jurisprudence, however, are the insightful comments that accompanied the proposed legislation. Professor John M. Brumbaugh, the Commission's Reporter, was primarily responsible for those comments.

The Maryland bench and bar are very fortunate that John Brumbaugh decided to teach at the University of Maryland. I am honored to write this "thank you" in recognition of his outstanding service to our profession.

DONALD G. GIFFORD\*

Eisenhower was President. Television (black and white, of course) was becoming a novelty in a few American homes. The Supreme Court had decided the first of its opinions in *Brown v. Board of Education* a year before, but few realized the enormous changes that it would bring in American society. The Baltimore Orioles, a new American League franchise, were midway through their third season. Roger Howell was dean of the University of Maryland School of Law, and there were seven faculty members. Of the 439 students, almost all were men and almost all were white.

An unexpected death on the faculty in 1956 created room for a new hire, a 1951 graduate of the Harvard Law School who had returned to Harvard during the 1955-56 academic year as a teaching fellow.

Now this spring, Professor John M. Brumbaugh, the Wharton, Levin, Ehrmantraut, Klein & Nash Distinguished Service Scholar, leaves the faculty after forty years of service. Though no one has

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\* Dean, University of Maryland School of Law.

counted, it is probably a safe bet that he has taught more Maryland lawyers, and more University of Maryland School of Law graduates, than any faculty member in history. Yet his impact cannot be measured by the length of his service or the number of his students. While difficult to quantify, it is probably accurate to say that no professor has had as much impact on the lawyers of Maryland.

Although new methods of teaching the law have proliferated in recent decades, John has taught the law in "the grand old tradition," using the casebook method and Socratic dialogue. Few Maryland graduates escaped his teaching of criminal law or evidence. His *Cases and Materials on Criminal Law and Approaches to the Study of Law* became a leading Foundation Press casebook.

While traditional in his classroom approach, and often demanding in that setting, there is another more mellow side to John Brumbaugh that is often recognized, but seldom acknowledged. As dean, I spend much of my time talking to alumni taught by John. They remember him with warmth and affection. He was a key part of their introduction to the law.

And what role has John Brumbaugh played in the dramatic transformation of the University of Maryland School of Law during the past quarter century? As the senior faculty member during much of that time, he helped set the tone during these changing times. The University of Maryland School of Law was not to be one of the many law schools with a faculty divided over issues such as the introduction of clinical education. Although John was not often at the vanguard of revolutionary curricular change, his commitment to "let a thousand flowers bloom" made the changes in recent decades at the law school much smoother than they might have been and made the resulting curriculum much richer.

John Brumbaugh's warmth and charm, and the example he has set, are important ingredients in the collegiality that exists among the law school faculty. John is more than a superb scholar and teacher; he is a wonderful human being who has done much to influence the culture of the law school. Who will write the poem for the retirement party for Professor John Brumbaugh? For it was always John who was the poet laureate of the faculty.

Professor Brumbaugh is a fixture not just at the law school, but in the legal culture of the state of Maryland. He drafted proposed criminal codes, he lectured to judges, and his wit and charm are always a familiar part of gatherings of Maryland lawyers and judges.

Forty years and thousands of students later, we bid you farewell, John. We are grateful, however, that although you will be resigning as

a full-time member of the faculty, you will remain a part of the University of Maryland School of Law community that you have played such an important role in creating and defining.

JOHN ESTER\*

Much can and should be said about the many contributions John Brumbaugh has made to the University of Maryland School of Law as a teacher, scholar, member of faculty committees, and an active participant in Faculty Council meetings. However, I want to share some personal recollections.

When my family and I moved to Baltimore in 1960, a series of circumstances arranged themselves so that our budget was very limited, leaving hardly any funds for entertainment. Imagine our delight when John took us to Marconi's for dinner and to Ford's Theatre to see *A Raisin in the Sun*. And then later, it was Miller Brothers for dinner and Ford's Theatre for *La Plume de Ma Tante*. What a treat—good food, great theatre, and a delightful host.

And then John introduced me to Dr. Gideon Fell, the master detective created by John Dickson Carr. "The only door was locked and bolted from the inside—the windows were nailed shut—there was no other entrance, and yet . . ."

John's friendship and generosity also have been extended to our children. Vicky will never forget being taken to the circus, given a roll of quarters, and told to spend them on *anything* she wanted. (We were told to look the other way.) And Joanna still has the very large Raggedy Ann doll that John gave her just because he wanted to, not because it was her birthday or any special occasion.

Janet and I will always be grateful for the day in February 1984, when John and his wife, Alice, stayed with Janet at Johns Hopkins Hospital—all day—while I was in the operating room.

I could go on, but it would be much, much more of the same. Together, we have shared many a laugh, played miniature golf on the boardwalk in Atlantic City, and "waited for Godot." Thank you, John.

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\* Professor, University of Maryland School of Law.