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TRIBUTES TO PROFESSOR GARRETT POWER

KAREN H. ROTHENBERG*

Garrett Power has been a learned and essential presence on the School of Law's faculty for forty-four years. We are indebted to him for both his sense of collegiality and his dedication to excellence in all that he undertakes. He retired at the end of 2006, but he continues to be a vital member of our law school community as Professor Emeritus.

Professor Power graduated from Duke University in 1960, earned his LL.B. there in 1962, and received his LL.M. from the University of Illinois in 1965. Since joining the School of Law faculty in 1963, he has coauthored one book, *Chesapeake Waters: Pollution, Public Health and Public Opinion, 1607–1972*,¹ and published numerous articles.

Many of these have included articles for law journals and other publications. One of the last lawyers to receive an LL.B. before law schools began awarding J.D.s instead, Professor Power wrote a piece called *In Defense of the J.D.* early in his career.² More than four decades later, the article is still a reflection of its author—a learned and historical work that includes hints of the professor's wry sense of humor. His scholarship continued with a Law Review article whose title was, like its author, gently self-deprecating: *More About Oysters Than You Wanted To Know*.³

These two early writings reflect Professor Power's special interests—history and the environment. He has long been a champion of environmental causes, with a particular focus on the laws governing the Chesapeake Bay and Maryland's wetlands. His interest in wetlands dates from the days when the sensitive ecosystems were considered swamps to be gotten rid of. Times have changed, of course, and partly with the help of Professor Power, who authored the first draft of Maryland's wetland statute.

Professor Power's more recent scholarship has examined constitutional law and legal history. He has written instructional materials and articles about the constitutional limitations on land-use controls,

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1. JOHN CAPPER, GARRETT POWER & FRANK R. SHIVERS, *CHESAPEAKE WATERS: POLLUTION, PUBLIC HEALTH AND PUBLIC OPINION, 1607–1972* (1983).

2. Garrett Power, *In Defense of the J.D.*, 20 J. LEGAL EDUC. 67 (1967).

3. Garrett Power, *More About Oysters Than You Wanted To Know*, 30 MD. L. REV. 199 (1970).

environmental regulations, and government exactions. His historical work has resulted in a series of monographs considering the origins of the land system in Maryland and land development in the city of Baltimore. Professor Power's work in these areas has been both rigorous and groundbreaking.

A part of his legacy, and one of which I am particularly proud, is his work on the restoration and preservation of Westminster Hall and Burying Ground on the law school campus. The work began in 1977, after the First Presbyterian Church closed its doors. Professor Power was project manager of an extensive restoration effort through the newly created Westminster Preservation Trust.

The project presented several challenges, but Professor Power took them on with characteristic vigor. The surrounding churchyard is the final resting place of Edgar Allen Poe and several luminaries from the Civil War and the War of 1812, but the graves had suffered the ravages of time. Over five years, Professor Power combined leadership with a respect for history to complete the project. He included his students in many aspects of the work, giving them hands-on experience with the legal issues underlying trust creation, land use, and preservation. In 1983, Westminster Hall was opened, and the building was once again a destination for visitors from around the world, and an elegant gathering space.

Like much of what he has undertaken over the years, Professor Power's work on the Westminster project benefited not only the University of Maryland but also the extended community. I am grateful to him for his dedication to worthwhile causes through a long and distinguished career. We will continue to enjoy his gentle humor and famously dapper attire—including his signature red socks—as he remains with us on campus in the coming years.

GARRETT POWER: BALTIMORE AND THE BAY

DAVID BOGEN*

Garrett Power breathes Baltimore—not from the moment he was born, because that was in Harford County, but from his earliest days of coming to the city with his parents. He inhaled the stories of the place and has given them back to us in his articles on the building of Baltimore—regaling us with insights into both the very earliest set-

tlers¹ and its later guiding lights.² He sees people as they are—heroes with flaws and villains with virtues.

Nearly thirty years ago Garrett asked me what I was doing. I told him proudly that I was researching the first African American to attend the University of Maryland School of Law—to which he remarked “Oh, Harry Cummings.” I had been referring to Donald Murray, the plaintiff in the NAACP’s first successful school segregation case.³ Garrett, however, knew about the integration of the law school a half century earlier. He had already written his groundbreaking article, *Apartheid Baltimore Style*,⁴ and was familiar with a whole group of nineteenth century black Baltimore lawyers. Thus, his questions and his knowledge have been the inspiration for much of my research agenda for the past quarter century.⁵

Gary supervised the restoration of Westminster Hall and the graveyard. His retirement party was also a celebration of the inauguration of the signage for the graveyard to tell future generations about this historic location, one of his pet projects. Historic preservation of the city’s landmarks has been one of his loves. He so loves old buildings that he was the only faculty member to question the building of our marvelous new facilities, preferring instead to explore housing the law school in some restored old building rather than erect a new one.

But the history of the city is not Garrett’s only passion. *Chesapeake Waters*,⁶ his coauthored book on the policies affecting the ecology of the bay, reflects his love of the outdoors, and that love led to the creation of his family vacation home in Garrett County. He even spent a semester commuting from there to the University of West Virginia Law School. Driving his pickup truck with snow plow attached, wearing a lumberman’s shirt and red suspenders, Garrett is the hardy outdoorsman’s icon. Of course, you may also find him in his office, the image of the professor, wearing his beloved slippers amid the maps

1. Garrett Power, *Parceling Out Land in the Vicinity of Baltimore: 1632–1796, Part I*, 87 MD. HIST. MAG. 453 (1992); Garrett Power, *Parceling Out Land in the Vicinity of Baltimore: 1632–1796, Part II*, 88 MD. HIST. MAG. 150 (1993).

2. Garrett Power, *Public Service and Private Interests: A Chronicle of the Professional Life of Philip B. Perlman*, 4 J. S. LEGAL HIST. 61 (1995).

3. *Pearson v. Murray*, 182 A. 590 (Md. 1936).

4. Garrett Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910–1913*, 42 MD. LAW REV. 289 (1983).

5. For many years dividing our O’s tickets was a rite and joy of spring, although long range planning was not Garrett’s forte. Sitting with him and his friends or one of his children or his namesake grandchild at the ballpark was always a learning experience.

6. JOHN CAPPER, GARRETT POWER & FRANK R. SHIVERS, *CHESAPEAKE WATERS: POLLUTION, PUBLIC HEALTH AND PUBLIC OPINION, 1607–1972* (1983).

and images of Baltimore, leather elbow patches on his tweed jacket and peering over his spectacles.⁷

Garrett is an iconoclast—a critic of conventional wisdom who does not suffer fools gladly. He would rarely sit through a faculty meeting, standing and stretching what he continues to claim is a painful bad back, but the timing of the stretch could be telling. Discussions of appearances and image, long perorations on the virtues of some proposal or personality, the reading of written reports, or petty bickering all seem to cause immediate flare-ups of his back condition.

His advocacy of continuity with the past, his curmudgeonly cracks about public relations froth, and his disparagement of changes are only part of picture. Garrett has been first in countless areas—teaching environmental law before Oscar Gray published the first environmental law casebook, partnering with economist Steve Hanke for the first law school course cross-registered and co-taught with Johns Hopkins faculty, bringing archivist Ed Papenfuse to co-teach at the school and bring history alive, starting the annual Baltimore City history conference just three years ago. He was one of the first faculty members to adopt the new technology, using PowerPoint to replace his slides of historic events. He has been careful to hold fast to values that he finds true despite the forces for change, but just as quick to take advantage of new ways of doing things that are consistent with those values.

Thirty-five years ago I taught Garrett to play squash—and that day he beat me! We soon switched to playing left handed (because my left was almost as good as my right), then he played left handed while I played normally, and finally he had to find a new partner. And so, for almost forty years we have been friends, and he has always been there first whether in athletics or academics. Long may he continue to do so!

EDWARD C. PAPENFUSE*

When Garrett Power returned from teaching in Scotland this summer, I asked him if he would mind speaking to our summer interns on the subject of Baltimore City ground rents. Ground rents in Maryland were a hot topic in the last session of the legislature. They led to a flurry of legislation, some of which was sponsored by graduates of the University of Maryland School of Law, and which, we sus-

7. I could write about his hats, but that would just be put down to jealousy.
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* Maryland State Archivist and Commissioner of Land Patents.

pect, will result in some intense litigation, especially on constitutional grounds. Garrett was generous with his time, as he always has been with his students, and agreed to talk with us about an aspect of what, in many ways has been an obsession of his whole professional career, the history and law of property in Maryland.

To put it mildly, the lecture was one of the best that I have had the privilege to attend in a very long time. Garrett spoke for over an hour with clarity, humor, and insight, all characteristics of what I have come to know as his classroom style. He placed what some consider an arcane subject into the broader context of the economic and social history of Baltimore and the nation. He merged political and legal history with economic and social conditions from the earliest inception of ground rents as an economic development tool, essential to Baltimore's growth, to the unintended and widespread confusion today over the definition and value of a "ground rent." We all came away both enlightened and wishing to know more. That is the mark of a good teacher and scholar.

I first came to know Garrett through his work as a staff member for the Maryland Constitutional Convention of 1967–68, where I ran across thoughtful essays that he wrote at the behest of committees seeking to revise and update Maryland's constitution. While the proposed constitution was not adopted, much of what the convention committees recommended was subsequently enacted into law, largely due to the excellent research and advice prepared by staffers like Garrett.

My next encounter with Garrett's work was with the innovative *Legal Rights in Potomac Waters Proceedings of a Conference at Harper's Ferry, West Virginia*,¹ published in September 1976. It is a pioneering blend of environmental law and history which did not get the attention it deserved in the recent Supreme Court case over the Potomac waters, a case that Maryland lost to Virginia.² Fortunately Garrett is a firm believer in the value of accurate history to the interpretation of the law, and might even subscribe to the idea that no decision of a court can withstand a challenge based on sound historical data over the long run. It is more a matter of how long that might be, and with regard to the management of the waters of the Potomac, it may prove to be a very long time indeed before *Legal Rights* contributes to a reversal.

1. GARRETT POWER ET AL., *LEGAL RIGHTS IN POTOMAC WATERS: PROCEEDINGS OF A CONFERENCE AT HARPER'S FERRY, WEST VIRGINIA* (Garrett Power ed., 1976).

2. *Virginia v. Maryland*, 540 U.S. 56 (2003).

Over the intervening years to the near present, I continued to read Garrett's articles in the *Maryland Historical Magazine* and elsewhere, learning much in the process about his subjects, and his dedication to understanding and preserving Baltimore's history, both through writing and active participation in the preservation of important buildings such as Westminster Church.

When I was invited to co-teach a seminar on "Building Baltimore" with Garrett in the temporary quarters assigned while the new facilities were under construction, I was both flattered and delighted. It was the beginning of a teaching partnership, one of two I cherish at the Law School, in which I continue to learn as much from my colleagues and students, as, I suspect, they learn from me.

It is a privilege to be a student of Garrett Power's. It is an enriching experience to be his colleague. I look forward to working with him in what is not really retirement, but a new phase in the career of a generous and inspiring mentor.

GARRETT POWER: ONE STUDENT'S PERSPECTIVE

PHIL DIAMOND*

Garrett Power was the first professor to call on me in law school. I had to admit I hadn't done the reading. I was mortified. I hadn't understood on his syllabus that each class was divided into two sessions, each with its own reading assignment. While I wondered whether I was smart enough to be in law school since I couldn't understand a syllabus, Garrett took my embarrassed apology in good stride, saying "We'll catch you later, Mr. Diamond." He certainly did.

After my inauspicious beginning, Property became my favorite class, the one in which I most wanted to succeed. My colleagues and I in the Evening Division, arriving at class a bit worn from our day jobs and family responsibilities, appreciated Garrett's rare combination of relaxed manner, sharp, analytical mind, and wry sense of humor (often directed at himself). We were impressed by the breadth and passion of his knowledge of history and national and local politics, as well as the law, and how he was able to transmit that knowledge in memorable stories. To this day, I can't pass the exit sign for Burlington County on the New Jersey Turnpike without thinking of our class on exclusionary zoning, focusing on *Southern Burlington County NAACP*

v. Township of Mount Laurel.¹ Understanding the *Mount Laurel* court's strategy in developing an independent interpretation of the New Jersey state constitutional provisions, rather than simply following Supreme Court precedent, stood me in good stead a few years later when I clerked for the Honorable John C. Eldridge on the Court of Appeals of Maryland.

Garrett's mastery of diverse teaching situations was equally remarkable. After the lecture-style Introduction to Property, I took his seminar on Land Use Control. This course was a history of the Supreme Court's land use and zoning decisions—an historically important area, but one, aside from a few high-profile cases, that is largely overlooked in the standard surveys on constitutional law. Garrett made his own textbook, an anthology of opinions I still treasure. He kept his commentary to the barest possible minimum and incorporated more text per case than is usual in commercial textbooks. As a result, we were better able to analyze the decisions for ourselves and to read the personal and political stories informing the legal principles and precepts.

My last class with Garrett was Building Baltimore, his unique, small-group excursion into the history and present of a Baltimore neighborhood. Twelve of us studied the working-class communities of Fairfield and Wagner's Point (one black and one white) on the Fairfield peninsula, from their origins in precolonial days to the imminent relocation of their residents due to the close proximity of chemical and other dangerous industrial sites. For this class, we wrote our own book, a collection of essays reflecting our interviews with the people in the neighborhoods, hours of research on old newspaper articles in the Maryland Room of the Enoch Pratt Library, as well as contemporary sources, and individualized tours of the peninsula. I believe I was the only member of my law school class to earn credit for touring and writing a history of a municipal sewage plant.

Garrett also demonstrated the extent of his expertise in his publications, ranging from his examinations of the regulation of ports and wetlands, such as *The Fox in the Chicken Coop: The Regulatory Program of the U.S. Army Corps of Engineers*,² to his studies of racial and religious discrimination in housing and land use in Baltimore, such as *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910–1913*.³ Al-

1. 336 A.2d 713 (N.J. 1975).

2. Garrett Power, *The Fox in the Chicken Coop: The Regulatory Program of the U.S. Army Corps of Engineers*, 63 VA. L. REV. 503 (1977).

3. Garrett Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910–1913*, 42 MD. L. REV. 289 (1983).

though Garrett was too modest to draw attention to his writings, I came to appreciate his eloquence while working as his editorial and research assistant. Showing his characteristic independence of mind with respect to matters of spelling and punctuation, he kept me fairly busy. But I was and remain impressed by his ability to conjure memorable phrases—for example, “An elegant proof has trumped a troublesome truth.”⁴

While reviewing his many publications I admire, I found one sentence in particular that conveys the interest he holds as a writer and historian and also hints at his success as a teacher. In introducing his study of the initial development of property rights and interests in the Baltimore area, he adds that, in addition to the transfer to America of patents, grants, escheats, entailments and the other building blocks of property law, “[f]or observers of the human condition there is a richer drama beneath the surface.”⁵ This sentence encapsulates Garrett’s gift as a teacher. What he taught us students to perceive were the human stories beneath the surface of what we would otherwise have considered to be dry, abstract legal records and principles—and that is also a valuable lesson for practicing lawyers.

MARY JO RODNEY* & LU ANN MARSHALL**

The University of Maryland School of Law is in a unique position in that it shares a city block with the Westminster Hall and Burying Ground, formerly known as Westminster Presbyterian Church and Cemetery. Home to the burial site of Edgar Allan Poe, the Burying Ground is one of the oldest cemeteries in Baltimore City and is the final resting place of men and women important in the history of both the City of Baltimore and the United States. The burial place of Edgar Allan Poe, which has become an international landmark, draws thousands of visitors annually to the Burying Ground.

In 1979 the University of Maryland School of Law formed the Westminster Preservation Trust, Inc. (WPT), a nonprofit organization which was charged with management of the affairs, business, and property. Shortly thereafter, a Board of Trustees was appointed,

4. Garrett Power, *The Residential Segregation of Baltimore’s Jews: Restrictive Covenant or Gentlemen’s Agreement?*, GENERATIONS, Fall 1996, at 5.

5. Garrett Power, *Parceling Out Land in the Vicinity of Baltimore: 1632–1796, Part 1*, 87 MD. HIST. MAG. 453, 454 (1992).

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* Director, Westminster Preservation Trust, Inc.

** Tour Director, Westminster Preservation Trust, Inc.

bringing together those individuals who shared an interest in saving the property. The first task of the Board of Trustees was to raise the funds necessary to embark on the restoration of the deteriorating church, catacombs and cemetery. Through the efforts of the newly formed WPT, \$1.75 million was raised through city, state and federal funds, as well as \$350,000 in private contributions. Once the funds were raised, the actual restoration began. Fortunately for the School of Law and WPT, one of the Trustees, Professor Garrett Power, had both an interest in history and a fascination with construction. It was only natural that Garrett stepped in to head the project.

Once the project was underway, Garrett could be found wandering through the site, hands in the front pockets of his blue jeans, with a red handkerchief sticking out of his back pocket, and wearing bright red suspenders, red socks, and work boots. It would be safe to say that Garrett had found his “niche.” One of the most frequently asked questions when visitors come to Westminster Hall is “Why are the railings red?” The answer Garrett has always provided is because “it is the one common color in all of the stained glass windows.” But, after many years of seeing Garrett wear red socks, red vests, and red sweaters, topped off by a red oriental rug on the floor of his office, the truth has finally been revealed—Garrett’s favorite color is red!

His quiet demeanor and steadfast determination ensured that Westminster Hall was gloriously returned to its original beauty, while creating a space that is both functional and adaptive to modern use. Through his invaluable leadership, Westminster Hall and Burying Ground reopened in 1983 following five years of creative restoration.

Garrett has been an excellent mentor to Westminster, helping to resolve many issues involved in managing the site, from nuts and bolts to financial crisis. He is always the calming force during the many facets of maintenance repairs, AC malfunctions, and black cats in the Burying Ground with the exception of when he reminds us of his “concern” (we prefer to call it a nightmare) that the Hall tower will fall through the roof and crash into the catacombs. This has always caused us to wonder if he knows something about the foundation of the building that he has not shared with us.

Garrett’s knowledge of the history of the church and the people who populated Baltimore and who are buried here is remarkable. He strives to keep that history alive for others, and has instituted a yearly workshop for Baltimore historians that has become a very popular event for the wider academic community. Because of his excellent reputation in the Baltimore historical community, Garrett has been able to attract first-rate scholars to share their knowledge. One re-

cent, well-attended workshop was entitled “Lies Historians Tell: Baltimore Bunkum and Maryland Myths,” and was followed by tours of Westminster Burying Ground.

Garrett’s stewardship of Westminster Hall and Burying Ground did not end with the restoration in 1983. In 2005, he spearheaded the effort to create exhibits which would allow visitors to conduct self-guided tours to learn more about Edgar Allan Poe, understand the contributions of those founding fathers (and mothers) buried within the Burying Ground, and trace the progression of burial styles contained therein. The exhibit, which opened in December 2006 to rave reviews, is intended to teach visitors about the history of the Church, Burying Ground, and Catacombs, and includes photographs, historic information, and a short film.

Garrett continues his commitment to WPT by serving as the President of the Board of Trustees. Westminster Hall and Burying Ground, its staff, and the staff of the law school owe a great debt to Garrett Power for not only helping to preserve the site, but also for preserving the history of Baltimore. Thanks for a job truly well done!