Two Professors,

Photography by Peter Howard
JOHN BRUMBAUGH AND OSCAR GRAY RETIRE FROM THE SCHOOL OF LAW

JOHN BRUMBAUGH AND OSCAR GRAY WILL RETIRE THIS FALL AND MEN SUCH AS THESE LEAVE A LEGACY TO THE SCHOOL OF LAW. THEY EMBODY COMMITMENT, LEARNING, CIVILITY AND EXCELLENCE. IN THEIR QUIET BUT DIFFERENT WAYS, THE TWO MARYLANDERS HAVE CONTRIBUTED TO THE WELL-BEING OF THEIR LAW SCHOOL, THEIR STATE AND THEIR NATION.

BRUMBAUGH WILL BE REMEMBERED AS AN EXTRAORDINARY CLASSROOM TEACHER. HIS INTENSE QUESTIONING OF STUDENTS, ALONG WITH HIS FASCINATING AND DEMANDING FINAL EXAMS, HAVE PREPARED A GENERATION OF MARYLAND LAWYERS TO FACE THE RIGORS OF THE PROFESSION. GRAY, AN EMINENT SCHOLAR AND THE LAST IN THE GREAT TRADITION OF TREATISE WRITERS, IS KNOWN ACROSS THE COUNTRY AS A LEADING EXPERT ON TORT LAW. WHILE NOT AS WELL RECOGNIZED, HE WAS ALSO A PIONEER OF MODERN ENVIRONMENTAL LAW.

In addition to their considerable legal acuity, John Brumbaugh and Oscar Gray are praised by former students and colleagues for their character and their humanity. “In many ways, Oscar Gray and John Brumbaugh have defined the University of Maryland School of Law over the last generation,” says Donald Gifford, dean of the UM School of Law. “They educated thousands of bright young lawyers who went on to become leaders of the bar, bench and business community. They also were at the forefront of Maryland’s growing national reputation.”

Less Contributions

BY QUINCEY R. JOHNSON, JD '93
JOHN BRUMBAUGH—A TEACHER WHO HAS INFLUENCED GENERATIONS OF MARYLAND’S LAWYERS

John Brumbaugh is the type of teacher who keeps any right-thinking law student up late at night. Few students risk coming to his classes unprepared.

U.S. District Judge Frederic N. Smalkin ’71, a student in Brumbaugh’s criminal law and evidence classes in 1965, remembers Brumbaugh’s classes as challenging but rewarding, pushing students to achieve more than they normally would. “John was, even in those days, an ‘old school’ teacher in terms of the Socratic dialogue,” Smalkin says. “He was an undoubted master of that teaching form, which requires a nimble mind and encyclopedic knowledge of the law.”

“He posed a tremendous challenge to his students who were a little apprehensive about being called upon. But if you kept your wits about you, you would not only survive but flourish, as many of his students have,” Smalkin adds.

While Smalkin saw a challenge, some students found a nightmare. Student evaluations called him “intimidating,” a critique that surprised Brumbaugh. “I thought it was intensity, not intimidation,” Brumbaugh says. “Part of my job is to accustom students to debate and talking in class, or to the kind of intense interrogation that they might get from a good judge exploring a point. A lot of students don’t like the pressure they feel in class, and I’m happy that they have other teachers with different techniques who provide other kinds of experience for them.”

To be prepared for Brumbaugh’s class meant more than reading the assignments. Better be ready to endure 10 to 15 minutes of intense questioning, from the facts of the case to the long-term policy implications of the court’s decision. Frank Burch ’74, chair of the School of Law’s Board of Visitors and chair of Piper & Marbury and a former Brumbaugh student, says Brumbaugh’s class helped shape his professional career. “He was well-prepared and he expected his students to be well-prepared,” Burch says. “He led by example; I always went to class prepared. It wasn’t a burden to me. I knew it was worthwhile. I felt I was learning more than just the subject matter. He helped impart a sense of discipline in learning the law.”

U.S. Congressman Benjamin Cardin ’67, a former Brumbaugh student, said that even after a full night of studying and little sleep, he would stay alert during Brumbaugh’s articulate presentations. “Just as you thought you understood where the professor was going with a case, he had the ability to turn the case on its head.”

Brumbaugh’s teaching style is uniquely his own. “I’m very intense and concentrated in what I am trying to do. One of my faults is that I am not apt to notice people in the class unless I’m questioning them.”

Little goes on in Brumbaugh’s class that catches him unprepared. Once, however, Brumbaugh explained to a class that the common law crime of arson required that a building be charred, not just scorched. “A student asked, ‘Can you commit arson on an igloo?’ I paused. They didn’t have igloos in common law England. Intriguing question. You can’t char ice,” he says. “If I had thought of it, I would have put that question on an exam.”

A former colleague summed up Brumbaugh quite simply when he said: “John, the problem with you is you wake up every morning thanking God that you are a school teacher.” Brumbaugh agrees. He loves teaching.

Brumbaugh never intended to become a lawyer. As an undergraduate at Swarthmore College, he studied medieval history and eagerly anticipated graduate studies. When his advisor casually informed Brumbaugh that his plans required German, the young Brumbaugh, acknowledging a lack of linguistic ability or desire, reconsidered. “There is always law school,” his advisor told him.

So, off to Harvard Law School went Brumbaugh. His law degree in hand in 1951, he started work as a clerk at the New York law firm of Haight, Deming, Gardner, Poor & Havens. After six months, he was drafted into the Marine Corps and assigned to teach business law at the Marine Corps Institute. But there was little chance that Brumbaugh would be a career lawyer. “I was not very good at parades—my coordination wasn’t right. I don’t think I had the true spirit of the Corps,” he recalls.

His military stint completed, Brumbaugh headed back to New York but when the law firm put him in its tax practice, he decided it was time to explore teaching possibilities. Harvard selected Brumbaugh as a teaching fellow where he worked with small groups of first-year law students. His most famous student during that time was Ralph Nader. “If he remembers me at all, it wouldn’t be fondly,” Brumbaugh recalls.

After a year at Harvard, Brumbaugh sought a full-time faculty position. He received two job offers—one in the
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— Former Colleague
Midwest and the other at the University of Maryland School of Law. He was born in Annapolis, Maryland and his family lived in Washington, D.C. Having heard good reports of Maryland from Harvard faculty, Brumbaugh accepted the job at Maryland and, in 1956, started his distinguished career at the law school.

In the past, the University of Maryland School of Law was more a haven of discontent than collegiality for its seven faculty members. Faculty meetings were torturous with seething quarrels among some members. Together with his friends and colleagues, William Cunningham and Lewis Asper, Brumbaugh played a major part in changing the law school’s atmosphere. “With the encouragement of then Dean Howell and others on the faculty, we worked very hard to try to maintain an atmosphere of respect, cooperation and professionalism. This collegial spirit has continued through the years.”

Colleagues credit Brumbaugh with being a major factor in maintaining faculty civility and cooperation. Michael Kelly, vice president of Georgetown University and former School of Law dean, says “Brumbaugh was one of the most important people in the school. He set the tone and character of discussion of policy and educational ideas. You always knew that he would say his piece, but respect the decision of the faculty.”

Brumbaugh admits that he was often in the minority on law school policy issues. Nevertheless, he was always the first faculty member to speak out and his views always had great impact.

“What carried so much weight is that everyone knew that John loved the law school,” says Professor Larry Gibson, a long-time colleague, “and its well-being was his top priority. Whether you agreed or disagreed with him, you knew he was thoughtful and sincere about his opinion.”

Brumbaugh’s influence went beyond the law school’s classrooms and faculty. The fruits of his works have influenced generations of Maryland lawyers throughout the state.

One of Brumbaugh’s most impressive works involved the effort to codify Maryland criminal law. From 1965 to 1974, he served as reporter and principal writer to the Maryland Commission on Criminal Law. Professor Edward Tomlinson, other faculty members and members of the bench and bar made major contributions to the work. In 1974, the commission, led by former Court of Appeals Chief Judge Frederick Brune and later by Judge Thomas Keriny, issued a 586-page report. The legislature declined to adopt it.

Judge Joseph F. Murphy, Jr., Maryland Court of Special Appeals, says despite its rejection by the legislature, the 1974 criminal code report is still considered a “wonderful piece of work.” Murphy says over the years, many issues explored in the report have made it into Maryland statutes. Even in current discussions on revising Maryland criminal law, the commission’s work is often consulted.

Brumbaugh’s expertise in criminal law came not from some long simmering interest but rather from a lack of seniority. “In the 1950s, beginning teachers usually got their jobs after a faculty member died or retired, and you just took the classes that faculty member had taught or nobody else wanted,” Brumbaugh explains. By the time he had enough seniority to drop the courses, he didn’t want to. From his years of studying criminal law, Brumbaugh authored the leading textbook in the field, *Cases and Materials on Criminal Law and Approaches to the Study of Law*, Foundation Press, (1986) and (1991). [Supplement due, summer 1996.]

Throughout his career at Maryland, he taught a variety of other courses including evidence, intellectual property, jurisdiction and domestic relations. In his retirement, he will teach courses in criminal law and intellectual property. Brumbaugh says he will not allow retirement to slow him down. He expects to continue writing on the law and may attempt a mystery novel.

“I’ve invested 40 years in this school. It’s a different place now—a better place in many ways,” said Brumbaugh. “I have a strong affection for it. I am a very fortunate person—very happy in both my married life and in my work. You’re a lucky person if you are happy in one of the two.” Since 1983, Brumbaugh has been married to Alice Brumbaugh, fellow faculty member.
OSCAR GRAY—THE EMINENT SCHOLAR

Like John Brumbaugh, Oscar Gray is first described as a person of great character. His colleagues praise him for his intellectual generosity and his dedication.

“He is an irreplaceable colleague,” says Professor Robert Percival of the UM School of Law. “He is generous with his time and shares his wisdom willingly.”

Although Oscar Gray’s voice is not one of the loudest on the law school campus, when he chooses to be heard on an important matter, the faculty gets a thoughtful perspective. But his reputation has been built on his extraordinary output as a scholar. “A genuine loss to the school,” says former Dean Michael Kelly, “in terms of scholarly weight and intellectual depth that he brought to the school.”

The seeds of Gray’s future academic success could be seen long before he became a lawyer. When the young man from Hagerstown, Maryland left for studies at Yale University, he aspired to subdue the world of knowledge. “I was interested in acquiring all knowledge, but my mathematics was too week to pursue physics.” So philosophy and government became his course of study.

During those years, he recalls, students were excited about learning despite memories of the Depression, World Wars and fascism. “My undergraduate years were a time of great optimism among young people. I think we all looked forward to a better world and great possibilities of development and advancement.”

This excitement for learning and optimism propelled Gray in the intellectual life. At Yale, he found a place to satisfy his intellectual needs. A stint in the U.S. Navy had given him his first teaching experience when he learned to repair radar systems and later taught the skills to sailors who would replace him when he returned to civilian life.

Gray was drawn to the study of law because of the strong reputation the law school had on the Yale campus. “My interest in law was fed by the leading role the Yale Law School played in the intellectual life of Yale University and the outstanding people on the faculty,” he says.

As a law student, he worked with legal scholars and fellow students who would profoundly influence his life, academically and personally. He praised the law faculty at Yale for its tremendous amount of intellectual horsepower, masterful knowledge of the field, and impressive qualities of character. “I don’t put myself in the same league with them,” Gray adds.

But judging from the many tasks that his former professors and colleagues asked Gray to perform, one sees that they have a high respect and regard for his abilities.

After graduating from Yale Law School in 1951, Gray landed a job in the U.S. State Department’s Legal Adviser’s Office in Washington, D.C. Here he was responsible for international agreements concerning foreign aid and security matters for the State Department.

After six years, he left for the Nuclear Materials & Equipment Corp. where he served as secretary-treasurer and vice president. In 1967, he took a temporary assignment in Washington as special counsel to the President’s Task Force on Communications Policy.

After a year, Gray was recruited to join an unprecedented government project that would eventually move his career toward academia. In 1968, he established the Department of Transportation’s Office of Environmental Impact, which he directed for two years in both the Johnson and Nixon administrations.

The Office of Environmental Impact was the first government office to consider broadly the environmental consequences of an agency’s own actions. “No other government agency which had a different mission—such as building highways or controlling railroads—also had a staff that was assigned to be the agency’s environmental conscience,” he says.

The torts publications, which forced him to put aside his environmental law casebook, helped to establish Gray as one of the leading experts on the law of torts.
Gray’s research area was called “The Gray Zone,” home of any tort book not on the library shelf.
One of Gray's ideas—requiring environmental impact statements for federal transportation projects—has had a lasting impact on the United States. "It has brought about an increase in the cost of planning, but it has also increased the quality of planning," he notes.

Professor Percival says Gray was involved in the landmark legal cases that led to opening the courts to citizens seeking to challenge government action on environmental grounds. "He was instrumental in getting federal agencies to pay more attention to environmental concerns," Percival explains.

This involvement in the development of environmental law led Gray to the classroom. He left government to begin teaching experimental courses in environmental law at Catholic University and the Georgetown University Law Center.

He also started work on his ground-breaking book, *Cases and Materials on Environmental Law*, the first casebook on environmental law. Just as the book was going to press, Gray was called from Georgetown, asking if he would teach another course—torts. This call came two weeks before the start of classes.

With little time to prepare, Gray turned to Yale for help. "I got on the phone and called New Haven and my torts teacher, Fleming James. The torts faculty at Yale lined up a classy bunch of people. They laid out everything—teaching notes and syllabuses."

As Gray was leaving to begin teaching, Fleming James asked him if he would revise James' casebook on torts, which had been co-authored with Harry Shulman, former dean of the Yale Law School. This project took six years to complete with time out for the publication of the second edition and annual supplements to the environmental law casebook. Then James asked Gray to revise his monumental treatise on torts. The revision of Harper and James' *The Law of Torts* (2nd ed., 1986) would take 10 years to complete. "Looking back, it seemed impossible," Gray recalls.

But the torts publications, which forced him to put aside his environmental law casebook, helped to establish Gray as one of the leading experts on the law of torts.

Judge Guido Calabresi, U.S. Court of Appeals, 2nd Circuit and former dean of the Yale Law School, praises Gray's work on the treatise for being both comprehensive and intelligent.

"All too often, those who write encyclopedias of law are good compilers, but have no sense of what the law is about. Oscar is able to see both the forest and the trees, while being able to describe," he says.

Gray was hired by the University of Maryland School of Law in 1971 when he was beginning his torts casebook work. "I'm grateful to the school, particularly the library—for indulging me during my research, especially on the treatise. For several years, I had three or four long library tables buried with this stuff. I'm not naturally tidy or organized, so I would wind up with material scattered all around," he says.

Professor Gibson remembers those days when Gray occupied the law library, calling Gray's research area "The GRAY ZONE," home of any torts book not on the shelf.

Gray completed the revision and continues to supplement the work. He is currently working on the third edition of *The Law of Torts*, the first volume of which appeared late last year.

He is the last in the great tradition of legal treatise writers that began with Williston and Scott, Dean Gifford says. "After he leaves the scene, which fortunately he won't in the near future, there simply will be no one writing in that same genre."

In addition to his own scholarship, Gray has also worked on the Restatement of Torts with the American Law Institute. Geoffrey Hazard, Jr., executive director of ALI, says Gray was selected as an adviser on torts because, "he is well-informed and has a balanced and circumspect view of things—not lopsided in his views."

The school from which John Brumbaugh and Oscar Gray are retiring is vastly different than the one they joined. Dean Gifford summarizes their impact: "If we have been worthy colleagues for Professors Brumbaugh and Gray and continue to be worthy successors, then the future of the University of Maryland School of Law is very strong indeed."

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