

A JUDGE'S SCHOOL The Story of John White Brockenbrough

By M. W. Paxton Jr.

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JOHN WHITE BROCKENBROUGH, who played a pivotal role in the history of Washington and Lee University, used the English language eloquently. This eloquence led him into politics; it led him into teaching; it stood him in good stead when he was entrusted with the responsibility for inviting General R. E. Lee to become president of Washington College.

His success in persuading Lee to come to Lexington would alone have assured him a place of honor in the history of the college here. But he also looms large in its history for two other reasons: He was founder of the school that became the School of Law of Washington and Lee. And he was the first man to hold the office of rector of the college's board of trustees.

Had John White Brockenbrough left an extensive collection of personal papers, historians would have seized upon them with delight.

Unfortunately, however, the Brockenbroughs were not a family of paper preservers. Relatively few of Judge

Brockenbrough's writings are available to the would-be biographer. The story of his life must be pieced together painstakingly from such sources as newspaper files, minute books, legal documents and the correspondence of his contemporaries.

A few of his letters and speeches have survived, enough to give us glimpses of a man who was meticulous, self effacing, courteous, sensitive, fervent — and a man also subject to depression, and a poor business manager.

John White Brockenbrough was born December 23, 1806, in Hanover County. His father, William, was, successively, a circuit court judge, president of the state general court, and justice of the Virginia Court of Appeals.¹

Mr. Paxton was the editor and publisher of the *Lexington News-Gazette* from 1952 to 1994. A 1949 graduate of Washington and Lee University, he also earned a graduate degree in journalism from Columbia. He is a founder of Historic Lexington Foundation.

After studying at the College of William and Mary, young Brockenbrough matriculated at the University of Virginia on the first day it opened, in 1825.² He then studied law at Judge Henry St. George Tucker's private law school in Winchester, returning to Hanover County, where he became commonwealth's attorney. His interest in scholarship led to his publishing a two-volume work, known as the *Brockenbrough Reports*, on Chief Justice John Marshall's decisions in the U.S. Circuit Court at Richmond.³

About 1834 he moved to Rockbridge County and soon married Mary Calwell Bowyer, daughter of Colonel John Bowyer of Thorn Hill.⁴ Colonel Bowyer, himself a lawyer, lived in style and was owner of a coach-and-four, a rarity in these parts.⁵

Brockenbrough established a law practice and became active in the leadership of the Democratic Party. It was an endeavor in which his rival, John Letcher, enjoyed considerably greater success.

By 1841 he was co-publisher, with Samuel Gillock, of the local Democratic newspaper, the *Valley Star*, which existed from 1839 to 1862.⁶



William Brockenbrough,
J. W. Brockenbrough's father.
Courtesy Encyclopedia Virginia.

He early became a staunch friend of the Virginia Military Institute and in 1843 Brockenbrough was named to the VMI board of visitors, on which he served until 1846.⁷ On



John White Brockenbrough, c. 1870.
Photo by Michael Miley; courtesy of
Washington and Lee University Library
Special Collections.

other location, an action prompted in part by evidence of hostility toward VMI in the town and at neighboring Washington College. A meeting was called at the courthouse to rally public sentiment behind retention of the school. The speakers on that occasion were John White Brockenbrough and former Congressman Samuel McDowell Moore.⁸

After the election of Democrat James K. Polk as president in 1844, Brockenbrough actively sought the federal judgeship for the Western District of Virginia, which became vacant in 1845. In spite of the covert opposition of John Letcher, Brockenbrough won the appointment in 1846.⁹

On learning of his nomination for the judgeship, the local Whig organ, *The Lexington Gazette*, on January 8, 1846, paid Brockenbrough an unusual tribute. It stated, in part:

Opposed as we are, in politics, to Judge Brockenbrough, it has given us real pleasure on various occasions to pay a public tribute to the distinguished ability and unvarying courtesy which have characterized his practice as an advocate at our bar, as well as his upright and gentleman-

ly demeanor in all relations of private life. Diametrically opposed as we are to Mr. Polk and his party, we are ever willing to acknowledge and commend such good acts as they may perform, and in the small number of these must be mentioned the nomination of our townsman to the judgeship.¹⁰

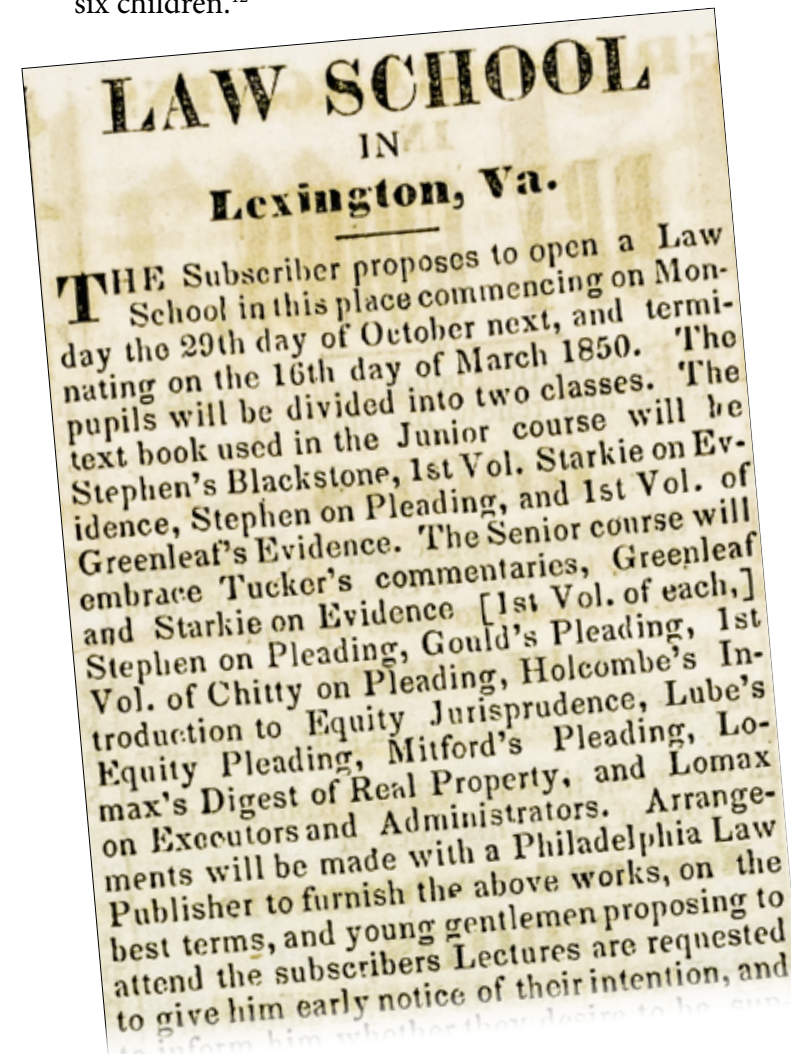
After Francis H. Smith, the superintendent, arranged in 1843 to have the institute provide the cadets' uniforms, certain local merchants had an indictment brought against him for selling goods without a license. Brockenbrough and another prominent Lexington lawyer, General C. P. Dorman, as counsel for the superintendent, successfully moved to have the proceedings quashed.

Several years later, in 1849, a move was initiated in the state legislature to investigate the possibility of moving the institute to another location, an action prompted in part by evidence of hostility toward VMI in the town and at neighboring Washington College. A meeting was called at the courthouse to rally public sentiment behind retention of the school. The speakers on that occasion were John White Brockenbrough and former Congressman Samuel McDowell Moore.⁸

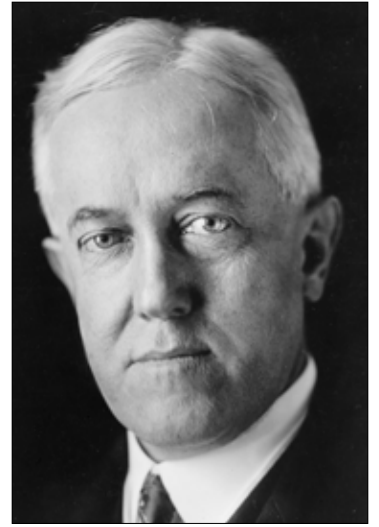
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THE *VALLEY STAR*, on July 26, 1849, carried Judge Brockenbrough's announcement of his plans to open a private law school in Lexington.¹¹

A hundred years later, in 1949, John W. Davis, in delivering the inaugural Tucker Law Lectures at Washington and Lee, observed that Judge Brockenbrough's docket was a far cry from that of the modern-day judge, as proved by the fact that "he ran his court and still found time for teaching." Equally pertinent are the observations that the judge's salary was far from that paid to federal judges today and at the time when Judge Brockenbrough was planning to open his law school, his family included six children.¹²



John W. Davis, Washington and Lee graduate and 1924 Democratic party candidate for president, delivered W&L's first Tucker Law Lecture. Photo courtesy of the Library of Congress.



The announcement in the *Valley Star* stated that the law school would open on the 29th of October and the session would end March 16. Tuition was to be \$60 per session and classes were to be held in the Franklin Society hall [on Nelson Street]. Two classes, junior and senior, would be offered, and students could enroll in both simultaneously without additional tuition charge.

In that day, although many students attended college before beginning the study of law, they could enter law school with no more preparation than those starting college. Thus the judge stated that "the hours of the daily lectures to his students will be so arranged . . . as to enable any member of either class to attend the lectures of any of the professors of Washington College."

The *Valley Star* reported on November 8 that "Judge Brockenbrough's Law School has opened well and his class are delighted with him as a gentleman and as an instructor. He now has eight in attendance and there is an absolute certainty that several other students will be in, in a few days. His introductory lecture was listened to, by a large number of our citizens. . . . We venture the assertion that the school . . . will be one of the most popular in the Southern Country."¹³

The judge acquiesced in the request of his students that his inaugural address be printed in pamphlet form and in the newspaper. It occupied three full columns in the *Star* of November 22.¹⁴

In a characteristic passage he declared: "I will confess . . . that there have been moments when I have shrunk back appalled by the magnitude of the task I have undertaken. But these gloomy forebodings are no



Note the magnitude of Judge Brockenbrough's opening remarks

longer indulged. The hideous phantom of grim despair, which sometimes came athwart my mental vision to dash my cherished hopes, has been driven back to its dark cavern, and I enter today upon my new career with

a cheerful spirit . . . inspired by an enthusiastic love of the profession we have adopted, and a resolution to triumph over every difficulty which may beset my path."

While expressing admiration for genius, the judge urged upon his pupils the necessity for hard work. "But why," he asked, ". . . need I cite examples to illustrate so obvious a truth as that labor is necessary to excellence? It is because, obvious as it may be, nothing is more difficult than to impress a realizing sense of it upon the sanguine mind of youth."

He explained to the students that his plan of instruction would be to "assign a suitable portion of the text, and then give a thorough and rigid examination of the assigned portion." This catechetical system, he said, would be supplemented by his lectures, which would amplify the texts and show where they had been altered by subsequent decisions.

Five men were graduated in 1850 from that first session of the Lexington Law School and six were awarded degrees in March of 1851. During the 1850s, the school's enrollment rose as high as thirty-eight.¹⁵

The judge's school suffered a temporary setback in enrollment after a student killed a VMI cadet in April 1854. The law student, Charles B. Christian, stabbed cadet Thomas Blackburn in a scuffle over a question of escorting a young lady of the town to church.¹⁶

By December 1857, however, the *Richmond Dispatch* reported that the Lexington school had twenty-eight students and was "the largest private law school

in Virginia at present, or with a single exception, at any former time."¹⁷

Describing a trip to Lexington at the time, the *Dispatch* writer observed that "the grand crusade of Virginia Improvement seems to have left Lexington out of sight. . . . But deprived of its just share of material advantages, it has taken good care of itself in matters of intellectual improvement. With the exception of the University [in Charlottesville], no place in Virginia can surpass Lexington in the variety of its educational advantages."

The writer lamented that Lexington was "imprisoned among the mountains with no outlet to the busy world, except for a most execrable turnpike leading from a point on the Central Railroad called Goshen, distant 20 miles; and the ruins of the Staunton and Buchanan plank road, which, after a few years' service became a succession of the most dismal traps and pitfalls for unwary travelers. . . . The Goshen road surpasses the plank road in the abruptness and energy of its concussions. We cheerfully recommend both roads to persons suffering from dyspepsia and liver complaint. . . .

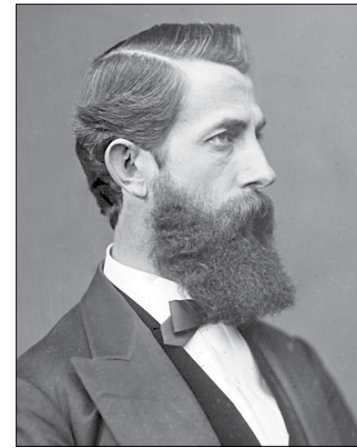
The Richmond writer continued:

We had the pleasure, during a recent visit to Lexington, of hearing one of the daily lectures of Judge Brockenbrough and it struck us that his mode of imparting instruction is one which might be imitated with great advantage in all law schools and seats of learning. . . .

We have never heard a lecturer who unfolded and explained the principles of his subject with greater clearness, precision and vigor than Judge Brockenbrough. Taking up the answer of the student to his question, he proceeds to discuss the particular point or principle which is set forth with an affluence of learning, appositeness of illustration and terseness of style that enchain the admiration of the student, and completely exhaust the subject. We had no conception that the dry subject of law could be made so agreeable. . . .

John James Davis, father of John W. Davis, was one of Judge Brockenbrough's students during those days, and the elder Davis recalled that the judge would take his students with him when he made his judicial rounds.

John James Davis, one of Judge Brockenbrough's first students; father of John W. Davis (see page 3).



The students thus saw the law in action in what the younger Davis described as "a primitive but highly practical use of the case system." A likeness of Judge Brockenbrough adorned the wall in the office of the elder Davis during his long career at the bar in Clarksburg, West Virginia.¹⁸

ONE OF THE most important events in prewar Lexington was the laying of the cornerstone of the VMI barracks at commencement on July 4, 1850. Judge Brockenbrough gave the address and, according to one newspaper account, "a large audience of both sexes attended."¹⁹

The *Gazette* gave this description of the occasion:

A large and imposing procession of Sons of Temperance from different divisions of the county, and of Odd Fellows, both orders dressed in full regalia, and of Sunday School scholars, accompanied by the Armory band from Richmond, proceeded to the laying of the Corner Stone of the new Institute.

After Judge Brockenbrough's address and appropriate ceremonies, the procession marched to the Presbyterian Church to attend the VMI commencement exercises. The judge used the occasion to call attention to the portentous cloud which was gathering in the North.²⁰

In June of 1851 the local jurist was one of two recipients of Doctor of Laws degrees awarded by Washington College. The other person so honored was Professor John B. Minor of the University of Virginia [eminent jurist, scholar, and for fifty-five years a law professor].²¹

A year later, on July 2, 1852, Judge Brockenbrough's election to the board of trustees of Washington College began his long formal connection with that institution.

TOWARD THE END of the decade, as war clouds gathered, Brockenbrough also had his private difficulties.

In March 1858, he wrote to a relative: "Troubles and cares press upon me on all sides but I have no time to be sad. This business of lecturing three hours a day to a large class of educated young men, walking to town and back, and studying six or eight hours in preparation for the next day's recitation and lecture is no child's play, depend on it."

His financial difficulties were compounded by the fact that he had bought several slaves and then had to buy several others to keep them with their families.²²

The taxing walk for the portly judge to and from Thorn Hill, along with his financial burdens, helped bring about an unusual real estate trade.

In March of 1861, Judge and Mrs. Brockenbrough traded their share of the Thorn Hill estate, which included about 450 acres and the classical revival house, to E. P. Paxton [Lexington lawyer and eventual commander of the Stonewall Brigade] in exchange for his property on the edge of town and a cash consideration.

Paxton had built the house, now known as Silverwood, and the property of about 15.5 acres extended



Property swap: Judge and Mrs. Brockenbrough traded their interest in Thorn Hill (top), west of Lexington, for Silverwood (below), in town.



southward down what is now Main Street to the approximate present location of Sellers Avenue.²³ (The Paxton property was terraced, some evidence of which still exists.)

Though a member of the federal judiciary, Judge Brockenbrough continued to be a part of the state political scene in the 1850s. In 1855 he was suggested as a candidate for governor on the Know-Nothing ticket but he issued a statement that he cordially detested the principles of the new party, including “the secrecy of their organization, their war upon religious freedom, etc.” concluding that they would never receive any countenance from him.²⁴

In 1858 he was supported for the Democratic nomination for governor by the *Richmond Enquirer*, a newspaper dominated by Governor Henry A. Wise, in an unsuccessful attempt to block the nomination of another Lexingtonian, John Letcher. In the political maneuvering that preceded the Democratic convention, Brockenbrough said that while he was not campaigning, he was available for a draft. The Wise forces threw all their support to Brockenbrough in the convention, but nevertheless Letcher was the overwhelming choice of the delegates.²⁵

Brockenbrough suffered another political defeat when he, as a secessionist candidate, lost his bid for election to the state constitutional convention of 1861, which decided on the issues of secession.²⁶

In January 1861, however, the Virginia General Assembly appointed him as one of five delegates to the abortive “Peace Convention” that met in Washington. The group included ex-President John Tyler, William C. Rives, James A. Seddon and George W. Summers,* and a writer of that day commented that “the State scarcely had five abler representatives.”²⁷

In October 1861, Brockenbrough was appointed Confederate States judge of Western Virginia, an office he held until the end of the war.²⁸

* Rives was a lawyer, politician and planter from Albemarle County. Seddon, a lawyer and politician, was a war secretary for the Confederacy. Summers was a state and Congressional representative from what would become West Virginia.

WITH THE COMING OF WAR, a chapter of Judge Brockenbrough's life closed. He had been a member of the federal judiciary for sixteen years and it is reported that during that period not one of his decisions was ever reversed upon appeal to the United States Supreme Court.²⁹

His law school was also closed by the war. From 1849 to 1861, records show that 207 students had attended, a number of whom later attained prominence in judicial, legislative and other fields.³⁰

As did others throughout the South at war's end, Judge Brockenbrough wasted no time starting to pick up the pieces of the area's ruined economy. On May 18, 1865, scarcely a month after Appomattox, he published a notice in the *Lexington Gazette* stating: “I propose to reopen my Law School at this place on the first Monday of July next. The place of instruction will be the same as that formerly adopted, with highly encouraging success, the length of the session being extended to nine months.” After listing the textbooks to be used, he announced that the fee for the course would be \$100.³¹

At the same time, the judge was much occupied with the problems of reopening Washington College. He was named to a committee of the trustees to “reduce to writing evidence showing the extent and value of the damage done to the buildings, libraries and apparatus by the United States Forces under the command of General Hunter in June, 1864.”³²

He was also appointed, on August 3, 1865, to a committee named to await the commandant of federal forces in Lexington with the request that the college buildings be vacated at once by the troops. At its August meeting, the committee reported on the damage at the college, and the committee was instructed to petition Congress for reimbursement.³³

At the board's June meeting a committee was named to apply to the legislature for an amendment to the college charter to separate the executive and legislative powers of its administration. In plain words, the trustees' minutes stated that the action was being requested so “the president shall not preside over the board or

be a member thereof.” The committee duly prepared a resolution that was adopted by the board August 3 and forwarded to the legislature.

The board then elected Judge Brockenbrough its first rector.³⁴

The action of electing a rector, which at another time might have been hailed as an important step forward, was completely overshadowed by another action taken that same August day: On motion of Bolivar Christian, General Robert E. Lee was unanimously elected to the college presidency.³⁵

To the new rector fell the task of calling on General Lee at his temporary place of residence, Derwent, in Cumberland County, and officially extending to him the invitation of the college.

It would be necessary for Judge Brockenbrough to be the houseguest of the famed Southern leader — but the rector did not possess a coat suitable for the occasion. According to an account passed down in the Brockenbrough family, Hugh Barclay, another member of the

On board Packet Jefferson Aug 1865

My dear General,

The desire I feel for the success of my mission is so absorbing that I trust you will pardon me for appearing somewhat importunate. It would be unwise to deny that the advancement of the interest of our venerable college was the primary consideration with the Board of Trustees in endeavoring to solicit your acceptance of its Presidency, yet it is but an act of simple justice to them to declare that your reputation is very dear to each of them and had they supposed that it could be imperilled by your acceptance of the position tendered to you, the trustees would have been made. But it is precisely because we feel assured that in discharging the comparatively humble functions of President of our College new honors would be added to your fame, your character would be presented in a new & most alluring light to your admiring countrymen that we presume to urge the acceptance of the office upon you with the confidence that it will soon be installed. You would thereby secure a more superior to display and by the exhibition of moderation & goodness establish new claims to the admiration & affection of your countrymen. To make yourself useful to the State, to dedicate your fine talents at her service to the service of its youth, to guide that youth

Yours with profound respect
John White Brockenbrough

Brockenbrough's impassioned letter to Lee, written just after the judge offered Lee the presidency of Washington College. Courtesy of Washington and Lee University Library Special Collections.

college board, had received some cloth from relatives or friends in the North, and he made the material available so that a coat might be made.

On his way home from Derwent on August 10, the judge poured out his enthusiasm in a letter to General Lee written on the Packet Boat Jefferson:

My Dear General

The desire I feel for the success of my mission is so absorbing that I trust you will pardon me for appearing somewhat importunate. It would be uncandid to deny that the advancement of the interest of our venerable college was the primary consideration with the Board of Trustees in inducing them to solicit your acceptance of its presidency, yet it is but an act of simple justice to them to declare that your reputation is very dear to each of them and had they supposed that it could be imperilled by your acceptance of the position tendered to you, the tender never would have been made. But it is precisely because we feel assured that in discharging the comparatively humble functions of president of our College

in the paths of virtue, knowledge & religion, not so one by precept, that you, our great example, these my dear General, are worthy of your ambition and we desire to present to you the means of their accomplishment. The educational interests of Virginia, or of all her Southern Sisters, have suffered dreadfully by the war. The University, & Mel. Institute, Hampden Sidney, William & Mary Colleges are all crushed & cannot be re-erected until we see you, for years to come. Washington College alone persists an independent establishment and you have only to stretch forth your powerful arm to rescue it, too, from impending destruction. You alone can fill its halls, by attracting to them not the youth of Virginia alone but of all the Southern & some even of the Northern States. That all these desirable results would follow your acceptance of this trust, your friends do feel the greatest assurance, though your genuine unaffected modesty may have suggested doubts of their fulfillment to your own mind. We pray that the reflections you generously promised to bestow upon the subject may lead you to the same conclusion.

In haste
Yours with profound respect
John White Brockenbrough

Gen. R. E. Lee.

new luster would be added to your fame, and your character would be presented in a new and most attractive light to your admiring countrymen that we presume to urge the acceptance of the office upon you with an importunity that else might seem indelicate. You would thereby evidence a mind superior to despair and by this exhibition of moderation and goodness establish new claims to the admiration and affection of your countrymen. To make yourself useful to the State, to dedicate your fine scientific attainments to the service of its youth, to guide that youth in the paths of virtue, knowledge, and religion, not more by precept than your great example — these my dear General are objects worthy of your ambition, and we desire to present to you the means of their accomplishment.

The educational interests of Virginia, as of all her Southern Sisters, have suffered dreadfully by the war. The University, Va. Military Institute, Hampden-Sydney, and William and Mary Colleges are all crushed and cannot be resuscitated, we fear, for years to come. Washington College alone possesses an independent endowment and you have only to stretch forth your powerful arm and rescue it, too, from impending destruction. You alone can fill its halls, by attracting to them not the youth of Virginia alone, but of all the Southern and some even of the Northern States. That all these desirable results would follow your acceptance of this trust, your friends feel the fullest assurance, though your genuine and unaffected modesty may have suggested doubt of their fulfillment to your mind. We pray that the reflection you graciously promised to bestow upon the subject may lead you to the same conclusion.³⁶

Lee wrote his letter of acceptance on August 24; the board met in special session on August 31 and unanimously agreed to his conditions, and Judge Brockenbrough transmitted the board's resolutions to General Lee with a glowing letter. The rector also composed a circular informing the American public of the Southern leader's intention to head the little college in Lexington.³⁷

Arriving in the town on September 18, General Lee was introduced by the rector to the trustees at their meeting on the twentieth. The board tendered its official

thanks to the rector the following day "for undertaking and so successfully executing his mission to General Lee" and authorized the treasurer to pay the rector's expenses.³⁸

At the explicit instructions of General Lee, his inauguration as president on October 2 was conducted with the barest simplicity. Ollinger Crenshaw, in *General Lee's College*, his history of Washington and Lee, notes that the famously voluble Judge Brockenbrough "found it difficult to restrain himself within the prohibition of speeches. He adverted to the seriousness as well as the joyfulness of the hour, eulogized General Lee, and congratulated the trustees and students, present and future."

General Lee took the oath of office and the rector handed him the keys to the college.³⁹

The trustees met at the conclusion of General Lee's first academic year, in June 1866, and the minutes state that "the Board, regarding it desirable that the law school of the Hon. John W. Brockenbrough should be connected with the college," a committee was named to confer with the judge. The minutes do not indicate whether the move initiated with the college or with the law school. Though still rector, Brockenbrough discreetly absented himself from that board meeting.

The committee, consisting, of Judge McLaughlin, Francis T. Anderson and James D. Davidson, was to report to the trustees such regulations in regard to the proposal as they might regard proper and to report a course of instruction.

The initial association of the law school with the college was rather tenuous.⁴⁰ Judge Brockenbrough was to be a professor of the college, although he was not a member of the academic faculty. Law students were not entitled to use the library or other college buildings.

Academic students might attend the law school upon payment of a \$60 fee in addition to their \$40 tuition for academic studies. Thus, while Judge Brockenbrough would be receiving \$40 less per student than the fee he had advertised a year earlier, he stood to benefit from having the law school associated with General Lee, through whose agency new life was rapidly being injected into the college.⁴¹

The first session of the law school conducted under the new arrangement was successful. In June 1867, twenty-two students from Virginia, West Virginia, Alabama, Kentucky, Tennessee and Missouri were awarded the bachelor of laws degree. The year was brought to a glorious end with the examinations vividly described in the *Gazette and Banner* of June 19, 1867:

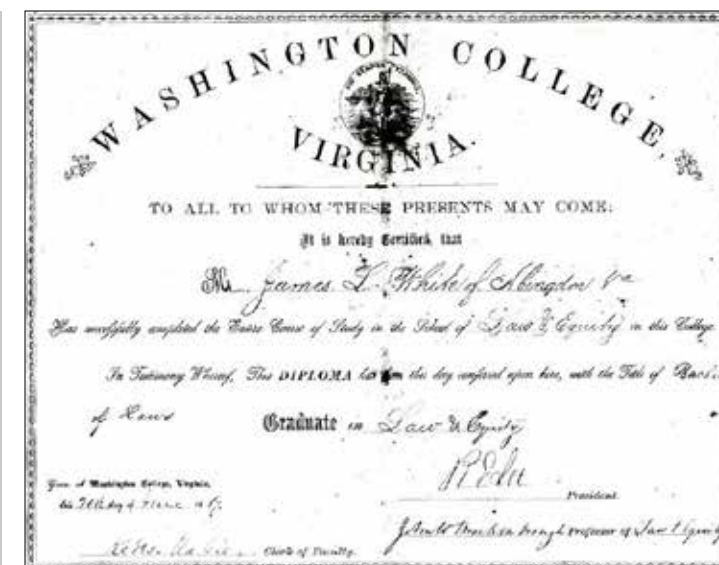
The examinations of Judge Brockenbrough's Law Class took place on Thursday, Friday and Saturday, and the members of the bar together with a number of other citizens were in attendance. We need not say more than that all were highly gratified at the readiness and proficiency exhibited by the class under the rigid and severe examination to which they were subjected.

We feel no hesitation in saying that this school, which is now attached to Washington College, will rank with any other in the South. . . . It must and will succeed.

Following the examinations, some of which General Lee attended, the students presented their teacher with a gold-headed cane as a token of their appreciation and esteem. "After the ceremonies concluded J. D. Davidson Esq. was called out and made them a short, humorous speech, containing much good and wholesome advice," the *Gazette* reported.⁴²

AFTER ITS FIRST auspicious year of association with Washington College, the law school failed to share the growth experienced by other departments of the college. In June of 1868 only seven men were listed as Bachelor of Laws recipients, and in 1869 the total enrollment of law students was only fourteen, of whom Judge Brockenbrough recommended twelve for degrees.⁴³

An unfortunate event involving his family also cast a shadow over Brockenbrough's life during this period. In what the *Gazette and Banner* described as "a daring outrage," the judge's youngest son, Francis Henry Brockenbrough, was shot on May 8, 1868, in a racial incident. Young Brockenbrough recovered, but the episode fanned bitter feelings in the community.⁴⁴



A diploma from the first graduating class. Courtesy of the Historical Society of Western Virginia.

Further misfortune struck the judge in 1869 when an extreme and protracted illness resulted in his largely withdrawing from the practice of his profession, instead applying virtually all his energies to the law class. The illness, he later wrote, had been "brought on by excessive devotion to the interest of my class."

A committee of the college trustees studied the law school situation and in June 1869 submitted a report urging that the law school be "connected into a more thorough union" with the college "as soon as practicable." The report called for more chairs of law, a broader curriculum and better integration of law courses with other studies. It pointed out that the entire direction of legal instruction had greatly changed in the past twenty-five years, shifting from study in lawyers' offices to attendance at well-equipped law schools. It was recommended that two professors of law be appointed with salaries sufficient to attract the highest-level talent and to enable the law professors to devote their time exclusively to their teaching duties.

The board accepted the recommendation and voted to invite the distinguished Kentuckian John C. Breckinridge, a former vice president of the United States, to be one of the professors. In event he declined, the college would continue its present arrangement with the law school for another year.⁴⁵

*John Randolph Tucker.*

The sensitive Judge Brockenbrough was deeply hurt by this action. Nearly two years later, he bared his feelings to two associates on the board, D. E. Moore and J. D. Davidson, writing to them that the board's action had placed him in "a position of extreme delicacy":

My first impulse was instantaneously to tender my resignation as a member of the board of trustees. Some of my warmest personal friends in the board very earnestly remonstrated against such a course and assured me that the resolution . . . was not in the slightest degree prompted by a feeling of unkindness toward myself personally or by any distrust of my ability to continue to perform efficiently and well the duties of the law department, but simply and entirely from a conviction that the great enlargement of the course of instruction in other schools of the college rendered a commensurate increase in the department with which I had been associated equally desirable.⁴⁶

General Breckinridge declined the school's invitation, but the next year the board successfully implemented its plans with the appointment of another distinguished

lawyer, John Randolph Tucker, counsel for the Baltimore and Ohio Railroad, to the law faculty.⁴⁷

In addition to approving the appointment of Mr. Tucker, the board voted to make the law department one of the schools of the college, with its professors to be regular members of the faculty.

The committee report adopted by the board held out high hopes for the expansion of the law school. The report stated that the "present distinguished professor" was willing to show his faith in the enterprise "by accepting, for the present, at least, one half the tuition fees" of the law school as his compensation. Mr. Tucker, on the other hand, was to be guaranteed a salary of \$3,200 for at least three years. Judge Brockenbrough was to teach common and statute law and Mr. Tucker, equity and public law.⁴⁸

With the new status of the law school in effect, Judge Brockenbrough, on September 10, 1870, tendered his resignation as a member of the board of trustees, pointing out that he was doing so because of the incompatibility between the functions of trustee and professor.

He wrote to the board:

I cannot dissolve the agreeable connection which has so long subsisted between us without the expression of my grateful sense of your uniform kindness and indulgence extended to me, while I imperfectly discharged the duties you assigned to me. . . . Let each of us then, in his appropriate sphere, of trustee or professor, extend every legitimate effort to make the old college worthy of the august name it bears.⁴⁹

The board adjourned its meeting until September 29, at which time it planned to fill the trustee vacancy created by Brockenbrough's resignation.

But on the evening of the 28th General Lee was stricken with his terminal illness. The board asked its rector to withhold his resignation until its March meeting.

SOON JUDGE BROCKENBROUGH had to perform another delicate mission for the board. Following General Lee's death, the board asked him

to call on Mrs. Lee and offer her the use of the president's house on campus for life and an annual annuity of \$3,000. The rector reported to the board in March that Mrs. Lee had declined to accept the annuity, and because her son, Gen. G. W. Custis Lee, had accepted the presidency of the college, she would continue to make her home with him in the president's house.

In the difficult period of adjustment after Lee's death, Brockenbrough continued to offer his resignation as trustee and the board continued to ask that it be withheld — until June 1872, when the resignation was accepted. The board placed on record "the deep sense of obligation it has felt to Judge Brockenbrough" and especially recognized "the valuable services rendered by him in the many important exigencies of the institution during the past seven years."⁵⁰

The expected flowering of the law school under the new arrangement proved disappointingly slow. With only thirty-one law students enrolled in the spring of 1871, Brockenbrough's portion of the fees yielded him an income amounting only to \$1,212. Under the arrangement agreed upon, Judge Brockenbrough was financially impoverished.

He wrote to Messrs. Moore and Davidson of the board asking that his salary be made in "some degree to approximate" that of the other members of the faculty, adding that he addressed them on the subject with "inexpressible repugnance."⁵¹ At its June meeting the trustees voted to make Brockenbrough's salary equal to that of the academic professors, but it was still considerably below that of Mr. Tucker.

Only seventeen students were enrolled in 1873, the year of financial panic. At this crisis point the board's three-year agreement with Mr. Tucker expired, and he submitted a conditional resignation to the board.

Pointing out that the law school had not come up to the expectations in providing sufficient income for the two professors and noting that the salary accorded him created an inequity between himself and his associates, Tucker stated that his duty to his family made it impossible for him to continue on present terms. He continued:

"The position is entirely adapted to my tastes . . . but unless it supports me I must seek other employments."

He concluded: "I feel it due to you and to myself, therefore, to place my resignation in your hands, so that you may feel no embarrassment in any respect, from my relation to the subject, in your future action."

The situation was desperate. In the preceding year the revenues from the law students had amounted to only \$1,200, while the salaries of the two law professors had totaled \$5,200.

Serving as a committee of the board, W. A. Glasgow and Thomas J. Kirkpatrick called on Judge Brockenbrough to discuss the situation and showed him Mr. Tucker's letter.

Incensed by what he considered to be "an insufferable insult to every member of the faculty who had a proper self-respect," the old law teacher later recalled that he had read Tucker's letter with "disgust and loathing."

The next day he wrote the board: "I should regret very much to lose the benefit of Mr. Tucker's services; but I much more regret to know that he is willing to retain his chair on a condition precedent, the performance of which would compel me to resign my chair of Common and Statute Law, as due to my own self-respect."

He observed that "it may be that, in the exigency which has so unexpectedly arisen the Board may deem it a measure of good policy to take a step backwards, and abolish the chair of Law and Equity altogether."

He continued: "I do not now tender my resignation, either conditionally or absolutely, but I beg to assure the Board that I earnestly desire that it will not feel the slightest embarrassment on my account. At the slightest hint from any member of the Board that it is his wish to abolish this department of the University, I will instantly resign my chair without reservation or condition."

Messrs. Glasgow and Kirkpatrick dispatched a cryptic reply to Brockenbrough stating: "The Board of Trustees received your letter of today and it comes our duty to inform you, conformably to the intimation of your letter, that the Board find insuperable difficulties in the way of continuing the Law School as at present

organized, and it is desired by the Board that you communicate your action in the premises, so that they may take the necessary action on the subject.”

Mistakenly assuming that the board intended to abolish the law school altogether, the judge wrote Messrs. Glasgow and Kirkpatrick: “With a view of placing the Board of Trustees of Washington and Lee University . . . out of all embarrassment growing out of recent complications, I tender to the Board through you, respectfully and without reservation, my resignation of the professorship in the Department of Common and Statute Law with which I have been heretofore honored by the Board.”

He later wrote that he was “astounded to learn” that the board had elected “the very man who has been most instrumental in the fermentation of this matter and placed him in full possession and control of a school which I had founded and fostered with parental care through the best years of a long life.”

In addition to appointing Mr. Tucker, who, meanwhile, had lowered his salary request from \$3,200 to \$2,700, the trustees named able, young, Charles A. Graves as his assistant in the law school.

Judge Brockenbrough aired the whole unfortunate episode in a two-column “card” published July 6, 1873, in the *Richmond Enquirer*.⁵²

A number of trustees felt a reply should be made to Brockenbrough’s statement, and one was actually drafted by Mr. Kirkpatrick. After much discussion the board apparently decided it would be best to make no public reply.⁵³ Unfortunately, the Kirkpatrick document has not survived; and unless this or some other pertinent material comes to light, it will be difficult to piece together all the facts of the case as they pertain to the board.

THE RECORD IS SILENT on the last three-and-a-half years of Judge Brockenbrough’s life, except for the notation that he tried unsuccessfully to reopen a private law school of his own in the fall of 1873.⁵⁴

At the time of his death on February 20, 1877, a resolution by the Lexington bar stated that “It was largely

due to his personal exertions and influence that General R. E. Lee accepted the presidency of the college.” The resolution cited his “courteous and dignified manners” and said he was “especially engaging to the young.”

A resolution by the Washington and Lee faculty commented on his “strong intellect and great industry,” and said that “his generous courage, wide sympathies and flowing courtesy endeared him to the hearts of all who knew him, and in a very special manner to the many young men who through a long series of years sat under his instruction, partook of his free hospitality, and were followed by him through their after life with unceasing affection and interest.”

An indication that time had healed at least some of the old wounds is found in the fact that his pallbearers included the president of Washington and Lee University, the superintendent of Virginia Military Institute, and many members of the local bar as well as officials of the town and state governments.⁵⁵



The Brockenbrough monument in Oak Grove (formerly Stonewall Jackson) Cemetery in Lexington. The inscription on Judge Brockenbrough’s facing is a quote from Tristram Shandy: “Tread lightly on his ashes / Ye men of genius, / For he was your kinsman. / Weed his grave clean, Ye men of goodness, / For he was your brother.”

NOTES

1. *Lexington Gazette & Citizen*, February 23, 1877: Judge Brockenbrough’s obituary, including resolutions by the Lexington Bar and the Washington and Lee University faculty (VMI Library).
2. Ibid.
3. Ollinger Crenshaw: *General Lee’s College*, Random House, New York, 1969, p. 325.
4. *Gazette & Citizen*: Brockenbrough obituary.
5. Otis Bowyer: letter to *Rockbridge County News*, April 15, 1936; also, Jessie Benton Frémont: excerpt from *Souvenirs of My Time*.
6. Lester J. Cappon: *Virginia Newspapers, 1821-1935*.
7. *Register of Former V.M.I. Cadets*.
8. William Couper: *One Hundred Years At V.M.I.*
9. Crenshaw: op. cit., p. 325.
10. *Lexington Gazette*, January 8, 1846 (VMI Library).
11. *Valley Star*: July 26, 1849. (W&L Library)
12. John W. Davis: “John Randolph Tucker: The Man and His Work,” *Washington and Lee Law Review*, Vol. 6, 1950, pp. 139–62.
13. *Valley Star*: November 8, 1849 (W&L Library).
14. *Valley Star*: November 22, 1849.
15. Crenshaw: op. cit., p. 327.
16. *Gazette*: April 17, 1854. (VMI Library)
17. *Gazette*: December 3, 1857, reprinted from *Richmond Dispatch*.
18. John W. Davis: op. cit.
19. *Valley Star*: July 11, 1850. (VMI)
20. *Gazette*: July 1850.
21. Trustees’ Minutes, Washington College: June 18, 1851.
22. Letter from Judge Brockenbrough to Henry M. Bowyer, March 3, 1859. (Copy in possession of M. W. Paxton.)
23. Rockbridge County Deed Book HH: pages 435, 437, March 16, 1861.
24. Crenshaw: op. cit., p. 328; *Gazette*: March 1, 1855.
25. Brockenbrough to Bowyer: June 26, 1858.
26. Crenshaw: op. cit., p. 328.
27. *Gazette & Citizen*: Brockenbrough obituary.
28. Crenshaw: op. cit., p. 328.
29. John W. Davis, op. cit.
30. Crenshaw: op. cit., p. 328.
31. *Gazette*: May 18, 1865. (VMI)
32. Trustees’ Minutes: W&L, June 21, 1865.
33. Trustees’ Minutes: W&L, August 3, 1865.
34. Ibid.
35. Ibid.

36. Allen W. Moger: “Letters of General Lee After the War,” in *The Virginia Magazine of History and Biography*, Vol. 64, No. 1, January 1956.
37. Crenshaw: op. cit., pp. 147–48.
38. Trustees’ Minutes, W&L: September 21, 1865.
39. Crenshaw: op. cit., p. 149.
40. Trustees’ Minutes: W&L, June 9, 1866.
41. Crenshaw: op. cit., p. 329.
42. *Gazette & Banner*: June 19, 1867. (VMI)
43. *Gazette & Banner*: June 24, 1868 (VMI) and Crenshaw, op. cit., p. 330.
44. *Gazette & Banner*: May 13 and May 27, 1868. (VMI)
45. Trustees’ Minutes, W&L: June 9 and 24, 1869.
46. Brockenbrough to D. E. Moore and J. D. Davidson, March 15, 1871, Trustees’ Papers, W&L (Treasurer’s Office).
47. Crenshaw: op. cit., p. 332.
48. Trustees’ Minutes, W&L: June 22 and September 10 1870.
49. Brockenbrough to W&L Board, September 10, 1870, Trustees’ Papers.
50. Trustees’ Minutes, W&L: September 13 and 29, October 1, 1870; March 14 and 16, 1871; June 17, 1872.
51. Brockenbrough to Moore and Davidson: op. cit.
52. *Richmond Enquirer*, July 6, 1873: “A Card from John W. Brockenbrough” (Virginia State Library).
53. Ollinger Crenshaw: manuscript, General Lee’s College, note 43 to Chapter XXIV.
54. Crenshaw: *General Lee’s College*, p. 333.
55. *Gazette & Citizen*: Brockenbrough obituary.

