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

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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. 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.

About 1834 he moved to Rockbridge County and soon married Mary Calwell Bowyer, daughter of Colonel John Bowyer of Thorn Hill. Colonel Bowyer, himself a lawyer, lived in style and was owner of which existed from 1839 to 1862. Bowyer, himself a lawyer, lived in style and was owner of the local Democratic newspaper, the Valley Star, enjoyed considerably greater success.

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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.

He early became a staunch friend of the Virginia Military Institute and in 1843 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. 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.

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 gentlemanly demeanor in all relations of private life. Dia-

Brockenbrough's announcement of his plans to open a private law school in Lexington. 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.

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.”

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.

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
enrollment rose as high as thirty-eight.\textsuperscript{15}

During the 1850s, the school's admission was limited to 45 students with no outlet to the busy world, except for a most executable 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. . . .

J. Ernest K. Porter

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 affectionate attention to the portentous cloud which was gathering in the North.\textsuperscript{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].\textsuperscript{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.
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 held until the end of the war.28

In October 1861, Brockenbrough was appointed Confederate States judge of Western Virginia, an office he held until the end of the war.29

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.30

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.31

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 $100.32

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.”33

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.34

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.35

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.36

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 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 un candid 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 imperiled 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

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.
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 by 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 only academic students but also law students. Washington College alone can fill its halls, by attracting to them not only academic students but also law students. For years to come. Washington College alone will stand to benefit from having the law school associated with General Lee, “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 proposed 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. 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.

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.41
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.

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.  

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.”

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.” 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, at 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 inequality 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 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 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.
5. Ollinger Crenshaw: manuscript, General Lee’s College, note 43 to Chapter XXIV.
7. Gazette & Citizen: Ollinger Crenshaw: General Lee’s College, note 43 to Chapter XXIV.
8. Trustees’ Minutes, W&L, June 9, 1869.
11. Trustees’ Minutes, W&L, September 13 and 29, October 1, 1870; March 14 and 16, 1871, June 17, 1872.
12. Trustees’ Minutes, W&L, September 13 and 29, October 1, 1870; March 14 and 16, 1871, June 17, 1872.
15. Ollinger Crenshaw: manuscript, General Lee’s College, note 43 to Chapter XXIV.
16. Gazette & Citizen: Ollinger Crenshaw: General Lee’s College, note 43 to Chapter XXIV.
17. Gazette & Citizen: Ollinger Crenshaw: General Lee’s College, note 43 to Chapter XXIV.
22. Trustees’ Minutes, Washington College: June 18, 1851.
23. Letter from Judge Brockenbrough to Henry M. Bowyer, March 3, 1859. (Copy in possession of M. W. Paxton.)
25. Brockenbrough to Bowyer: June 26, 1858.
33. Trustees’ Minutes, W&L, August 3, 1865.
34. Ibid.
35. Ibid.
38. Trustees’ Minutes, W&L, September 21, 1865.
40. Trustees’ Minutes, W&L, June 9, 1869.
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.
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.
53. Ollinger Crenshaw: manuscript, General Lee’s College, note 43 to Chapter XXIV.
54. Crenshaw: General Lee’s College, p. 333.