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A Tribute to William T. Brotherton, Jr.

It is fitting that William T. Brotherton, Jr. is commemorated in Volume 56, Number 3 of the *Washington and Lee Law Review*. For one, this issue contains the lecture series from the academic program honoring the 150th anniversary of the Washington and Lee School of Law and the 250th anniversary of the University, occasions that the subject of this dedication, a graduate of both institutions, would have found cause for celebration. Furthermore, the bulk of this issue, including the lecture series, engages the theme of responsibility. While the participants in the lecture series and the other contributors like Professors Ogletree and Logan take quite varied passes at the theme, the subject of our dedication embodies the essential sense of the word.

William T. Brotherton, Jr.'s long and fruitful life of public service resonates with the motif of personal, civic and professional responsibility. With seemingly boundless energy and enthusiasm, he toiled in every branch of government in his home state of West Virginia, carried on an active law practice, and all the while, never stopped contributing to his community in a variety of civic activities. He was "bigger than life, however, not because of his public service, but because of his dynamic personality, his magnetic interest in people, and his incessant outspokenness."¹ His immense vitality was infectious. As a colleague remarked upon Will Brotherton's passing, "his support was grounded in his belief that service to the community was everyone's responsibility."² What follows is a brief sketch of William T. Brotherton, Jr.'s public life, followed by excerpts from the words of those closest to him.³

1. Ed Welch, *Public Servant, Regatta Admiral Brotherton Will Be Missed*, CHARLESTON GAZETTE, April 18, 1997, at 5A, available in 1997 WL 7096549.

2. Jennifer Bundy, ASSOCIATED PRESS POL. SERVICE, April 9, 1997, available in 1997 WL 2514795 (noting comments of House of Delegates Judiciary Chairman Rick Staton, praising Brotherton's thirty years of service to Ohio-West Virginia YMCA).

3. The pieces reprinted below are excerpts from speeches delivered in honor of Judge Brotherton at the 1995 Spirit of the Valley luncheon.

The Honorable William T. Brotherton, Jr. was born April 17, 1926 in Kanawha County, West Virginia to Kathryn and W. T. Brotherton. During World War II he served in the United States Navy. After receiving both his undergraduate and law degrees from Washington and Lee University, he began a law practice in Charleston in 1950. After serving as an assistant in the Kanawha County prosecutor's office, Brotherton began his political career.

Will Brotherton was first elected to the House of Delegates in 1952. He served six terms in the House of Delegates and, beginning in 1964, five terms in the state Senate. Brotherton served as House Judiciary Committee chairman and House majority leader from 1960 to 1964. In the Senate he chaired the Judiciary Committee from 1970 until 1972, when he was elected Senate president, in which capacity he served until 1980. A fiercely partisan Democrat, Will Brotherton's frankness and honesty brought him a position of respect from both sides of the aisles.⁴ His reputation as a zealous opponent of corruption was made when, while in the Senate, he led the Purchasing Practices and Procedure Commission, later the Legislative Commission on Special Investigations, in reform of state purchasing practices. In recognition of his efforts, Brotherton was named the *Sunday Gazette-Mail's* West Virginian of the Year.⁵ Having left the legislature in 1980, Will Brotherton's career took a dramatic turn in 1984 when he was elected to the state's Supreme Court. He served as Chief Justice in 1989 and 1994. In 1995 he retired from the bench and joined the Charleston law firm of Spilman, Thomas & Battle.

While serving his state on the bench and in political life, William T. Brotherton, Jr. was serving his community in many other ways as well. At various points during his long and varied career he was vestryman, senior warden, and trustee of St. Matthews Episcopal Church; a member of the Board of the West Virginia Unit of the American Cancer Society; President of the Kanawha County Bar Association; President of the Charleston Chapter of Washington and Lee Alumni Association; Trustee of the Highland Hospital Association; State Chairman for the West Virginia YMCA Youth in Government Committee; and Admiral of the Charleston Sternwheel Regatta. In 1995

4. See Stacey Ruckle, *Modern Citizen Lawmakers Have Some Big Shoes to Fill*, CHARLESTON DAILY MAIL, Aug. 4, 1999, at 1A, available in 1999 WL 6738979 (noting remarks of contemporaries of the former legislator).

5. James A. Haught, *W.T. Brotherton, Jr. 1926-1997*, CHARLESTON GAZETTE, Apr. 8, 1997, at P4A, available in 1997 WL 7095010 (noting Brotherton led efforts to eliminate bribery in state purchasing after historic Barron scandals). Haught stated, "Integrity was the foremost quality of William T. Brotherton Jr. - and West Virginia's government is cleaner today because of it."

he was the recipient of the Spirit of the Valley Award, and the Washington and Lee Distinguished Alumnus Award.

The same energy and resilience that Will Brotherton manifested in public life also saw him through many medical crises.⁶ During World War II he survived three severe illnesses from typhoid, scarlet and rheumatic fevers. In 1960, during surgery, it was discovered that Will Brotherton had a malignant thymoma surrounding his heart, an inoperable cancer; after participating in experimental cobalt radiation treatment, his symptoms disappeared. In 1968 he was diagnosed with colon cancer, but, following two operations, he was able to defeat that illness as well. Then, in 1972, following a collapse, Will Brotherton's x-rays revealed a dark shadow on his brain. Without explanation, the spot disappeared. In 1994, while exercising in a Charleston gymnasium, he suffered a heart attack that required three open-heart surgeries. This last health crisis influenced his decision to retire from the court.

After his death, the West Virginia Senate passed a resolution recognizing their former President, declaring that William T. Brotherton, Jr. will be remembered for his "brilliant legal intellect, his wit and wisdom, his integrity, honesty and fairness, which emulated, would make West Virginia's government a model for the nation."⁷ U.S. Senator Jay Rockefeller remembered Will Brotherton as the "consummate public servant. His devotion to the rule of law and to the public who elected him was rare. He has a profound influence on West Virginia and helped shape our future in ways that few others have."⁸ U.S. Senator Robert Byrd echoed the sentiment: "With his passing, West Virginia has lost one of the most highly respected and beloved public figures it has ever been my privilege to know."⁹ William T. Brotherton, Jr. died on April 6, 1997, at his home in Charleston, West Virginia.

6. See 'Towering Figure' in State Politics Dies at 70: Former Lawmaker, Chief Justice Remembered for Setting High Standard, CHARLESTON DAILY MAIL, Apr. 7, 1997, at P1A, available in 1997 WL 7094806 (detailing Brotherton's series of miraculous recoveries).

7. Bundy, *supra* note 2 (quoting text of resolution).

8. *Towering Figure*, *supra* note 6, at P1A (noting remarks of Sen. Rockefeller).

9. Jack McCarthy, *Former Justice Brotherton Dies*, CHARLESTON GAZETTE, Apr. 7, 1997, at P1A, available in 1997 WL 7094860 (noting remarks of Sen. Byrd).

John L. McClaugherty*

It is an honor to share the podium to pay tribute to a great public servant, Will Brotherton. Many of his accomplishments as a public servant were summarized in the editorial in *The Charleston Gazette* on July 31, 1995. His colleagues on the West Virginia Supreme Court expressed their admiration of him and their comments of praise were reported in the *Charleston Daily Mail* on July 29. With over forty years of public service, his accomplishments are so many that I could not discuss them in any meaningful way in the five minutes allotted to me. For this reason, and because I was closely associated with him during his years of legislative service, I would like to speak briefly about the man who became my good friend during those years.

He served twelve years in the House of Delegates and sixteen years in the State Senate. He served as Chairman of the Senate Judiciary Committee from 1968 through 1972 and as President of the Senate from 1972 through 1980. During all of those years until 1975, I was privileged to serve as Clerk of the Senate Judiciary Committee and worked very closely with him. During those years, I learned that he was a man of great character, a most successful politician who spoke his mind without weighing the pros and cons of how the statement would fare politically, and a man with a warm but sometimes warped sense of humor.

In his autobiography, President Harry S. Truman stated: "It is not possible for a public man to be consistently worrying about what history and future generations will say about decisions he has to make. He must live in the present, do what he thinks is right at the time, and history will take care of itself."¹⁰ This philosophy well describes Will Brotherton's service in the legislature. He always did what he believed was right and said what he thought without regard to the political consequences. I shall never forget when a reporter asked him to comment on the performance, near the end of the first term, of Governor Moore, a Republican Governor with whom Senator Brotherton was often at odds. However, he commented that he thought Governor Moore had been one of the best Governors with whom he had worked. Needless to say, there were a lot of Democratic politicians who were not happy with that comment, but that statement was typical of the man we honor today. Although he disagreed with the policies of Governor Moore, he believed, on balance during that term, that Governor Moore had done a good job, and Will Brotherton had the courage to speak his convictions when asked. Each of us can imagine the kind of answer some other politicians might give in this day and age of trying to be all things to all people. Whatever Will

* Comments from Spirit of the Valley luncheon, Aug. 9, 1995. John L. McClaugherty is the managing partner of Jackson & Kelly, Charleston, West Virginia.

10. THE AUTOBIOGRAPHY OF HARRY S. TRUMAN 116 (Robert H. Ferrell ed., 1980).

Brotherton said he would do as a Delegate or Senator, a constituent could rely upon it. He is a man of his word in every respect.

I want to share one vivid example of his warped sense of humor – an incident I shall never forget. After the work of the Judiciary Committee was finished one night close to midnight, he was taking me home, after a brief stop at his office downtown, and we were going down Summers Street and passing the Lyric Theater at its then location. We were proceeding on the opposite side of the street toward the Lyric, when a well-known Statehouse reporter, who shall remain nameless, emerged from the Lyric, hoping, of course, that he could disappear into the night without having been seen or at least recognized. At this point, Senator Brotherton rolled down the car window and in that booming voice all of you have heard, yelled the reporter's last name and asked him whether he enjoyed the skin-flick. Because there were really very few people on the street, I am pleased to report that the reporter was laughing about it the next day.

As his son said recently with respect to his most recent illness, Will Brotherton has been a miracle man in recovering from very life-threatening illnesses. Physical health is intimately tied in with emotional health, and I personally believe that his strength of character has been a big factor in his overcoming his many illnesses.

John Morley observed, "Those who would treat politics and morality apart will never understand the one or the other."¹¹ In his public life, Will always merged politics and never treated them separately. He truly epitomizes the Spirit of the Valley. Will, I salute you as an outstanding public servant and as a true friend.

Ed Welch*

Will Brotherton is the spirit of the valley – and, in many ways, the spirit of the State of West Virginia. Over the years, his name has been well known as any – and it has always been associated with "calling it the way he sees it;" with "love of the state and its people," and with "clean government."

He grew up, of course, in a log cabin on the east side of Charleston – a log cabin that also served as "Suey" Brotherton's grocery store. He was an active helper in the store, and he tells tales of entering hundreds of Charleston

11. 2 JOHN VINCENT MORLEY, *ROUSSEAU AND HIS ERA* 277 (1925) (quoting JEAN-JACQUES ROUSSEAU, *ÉMILE*).

* Comments from Spirit of the Valley luncheon, Aug. 9, 1995. Ed Welch is President of the University of Charleston.

homes through the back door, carrying groceries. (The part about the log cabin, I confess, is apocryphal; but carrying the groceries is accurate).

Will Brotherton is bigger than life. The pathway he is following through life is one he has carved, because nobody has done it this way before. He has a great sense of humor and is candid to a fault. He sometimes tells people things they would just as soon not hear, but he does it in a way in which they listen. Even Ted Kleisner listened when Will wrote to him that the green beans at the Greenbrier were worse than those at Captain D's.

And Will would know, because he is equally comfortable in both places. When he had his latest medical adventure, Mary at Edgewood's 19th Hole wanted to know about the health of her bean soup critic; the doorman at the Greenbrier asked me about his favorite bicyclist; and the waitress at Southern Kitchen was concerned about her well-liked patron.

Included in Will Brotherton's operations was "insincerity" bypass surgery. There is not an insincere bone in his body. There is not an unkind thought in his head. He is blessed with an ability to idealize the past, to forget who his enemies are, and to move forward with optimism. It has served him well.

Will has occupied the chief legislative and chief judicial positions in this State. He is a very dedicated family person – and lucky to have Ann to keep him straight. He is the revered Regatta admiral, and is a faithful Episcopalian vestry person. . . .

Who is Will Brotherton? He's the person who sits on our front porch, looking across at the Capitol he loves, philosophizing about the future of West Virginia and lamenting some of our changing values. He's the person who shouts a challenging question – the question everyone is afraid to ask – across a crowded room with disarming directness and good humor. . . .

Rudyard Kipling had Will in mind when he wrote these words:

If you can bear to hear the truth you've spoken
 Twisted by knaves to make a trap for fools,
 Or watch the things you gave your life to, broken,
 And stoop and build 'em up with worn-out tools.

Will is a politician and he's done that. His capacity to combine forgiveness and tenacity with vision has made him an outstanding public servant.

If you can force your heart and nerve and sinew
 To serve your turn long after they are gone,
 And so hold on when there is nothing in you
 Except the will which says to them: "Hold on!"

He passes the test. How many lives does this cat have, as Will the Third says. He has successfully marshaled his resources so many times to fight personal physical battles and public political crusades.

If you can talk with crowds and keep your virtue,
Or walk with Kings – nor lose the common touch,

Not only does Will not lose the common touch, he brings it to others – to senators and governors and CEOs to whom the common touch may not come so easily.

If you can do these things, Kipling says, "Yours is the Earth and everything that's in it." And we say, "Yours is the Spirit of the Valley – and everyone that's in it" says thank you and God bless you.

William T. Brotherton III*

When I was ten years old . . . I began to understand what was behind my father's name. Up until that time, I was proud of my father principally because I thought he was famous and powerful. That impression was based upon my youthful perception of his political persona which was fueled by the fact that his name and picture were frequently in the newspaper, that he had an office in the State Capitol Building, that he won elections by large margins, that he was the Majority Leader of the House of Delegates, and that the teachers in school invariably raised his name during West Virginia history class and advised my school mates that HE was my father.

Well, that early perception was challenged and revised one afternoon in the early 1960s when I visited my famous and powerful Majority Leader father during a legislative session. I was allowed to sit on the House floor in a fold-up chair beside my father's desk. My imagination allowed me to believe that by being located so close to the power and fame, I was actually part of it. As I recall, my father's desk was located next to one of the chamber's side doors so that he had easy access to the hallway and to the leadership offices on the other side of the hallway. It also made him very accessible to everyone else. As a result, the area around his desk was always cluttered with people asking questions, delivering paper, and so forth. In other words, it was a very exciting and impressive place for a ten-year old to be.

On this afternoon, some hotly debated topic had arisen which caused another delegate to challenge the Majority Leader and to suggest that the Leader had made certain representations during a prior conversation upon which he was now reneging. Well, the Majority Leader got up on his feet

* Comments from Spirit of the Valley Luncheon, Aug. 9, 1995. William T. Brotherton III, son of William T. Brotherton, Jr., is a partner in the law firm Spilman Thomas & Booth, PLLC, Charleston, West Virginia.

immediately and told the offending delegate in no uncertain terms that he was way off base. And I will never forget, my father concluded his remarks with the statement, "And you sir, are a liar." And he sat down. Well, you would have thought Babe Ruth had just hit a home run. Everyone was coming over to his desk congratulating him and commending him on his dynamic floor speech. One fellow, after clapping the Majority Leader on the back, leaned over to me and said, "Your Dad is a hell of a good politician." I, of course, agreed. In fact, at this point I was so pumped up that I thought we would probably be moving across the street to the Governor's Mansion directly.

Well, things settled down, and I noticed that my Dad was unusually somber and was staring at the top of his desk. A few minutes later he rose to his feet and was recognized by the Speaker. Everything seemed to become hushed, as if in anticipation of another raucous floor speech. He then very quietly said that in all his years in the House of Delegates (which was something in excess of ten years at that point), he had never done or said anything that he regretted. But on that day he had. He said that he had embarrassed himself and had compromised the dignity of the House by allowing himself to get angry and call a fellow delegate a liar. He then apologized to a stunned chamber and said to the other delegate, "If we disagree, then we disagree. You are a gentleman and do not deserve my mean words. I am sorry for my actions, and I ask your forgiveness." Then he sat down. And no one moved for a moment. Then slowly, as business resumed, people came over quietly and patted my father on the back and spoke in soft words.

Being ten years old, I was devastated. I figured my famous and powerful father had now been exposed as a fraud and would be stripped of his honor. In fact, I fully expected someone to come to get me and my fold-up chair and usher us unceremoniously into the hallway. About then, the same man who had earlier spoken to me, came over and knelt beside my chair, "Young fellow," he said, "I was wrong about your Dad. He's not a hell of a good politician. He's a hell of a good man. You should be proud."

And he was right. My Dad is a good man. A good gentleman. A gentleman in the tradition of his alma mater, Washington and Lee University, and its namesake, Robert E. Lee. A man for whom honor and uprightness are more important than personal achievement. A man for whom fairness is a prerequisite to any action. A man who insists upon being held accountable for his actions, even when the consequences of those actions are unforeseeable and unpleasant. A man who hurts for other people – not for himself. A gregarious person who is lost if he cannot be with other people. An emotional man who cries when his feelings overwhelm him (which is increasingly more often). A loving man who gives comfort without consideration of cost. And, God help him, a man who has an incredible faith that everything will work out if we can just hold it together long enough.

OLIVER WENDELL
HOLMES DEVISE
LECTURE AND
COMMENTARIES
