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Albert Brault fights for the righteous cause

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For 50 years, Albert D. Brault has fought for the righteous cause

by BILL GLOSE

portrait by LARRY MARCUS

SOME LITTLE OL' LAWYER IN ROCKVILLE

Albert D. Brault, 75, still gets butterflies before he argues a case. "Anybody who is not nervous is probably going to lose," he says, "because if you're not nervous you're overconfident, and overconfidence doesn't win anything for anybody."

Brault began practicing law in 1958, working for his father's firm in the Transportation Building in D.C. They moved a few times, to houses near Dupont Circle and then office buildings on Connecticut Avenue; now he practices in Rockville, Md. The main office for Brault Graham is a three-story Victorian house with a cozy fireplace and creaking wood floors. Except for the office equipment, most everything hearkens to days gone by: an oil portrait of George Washington; wide Oriental rugs; a pendulum clock ticking like a metronome.

Such surroundings suit Brault, a distinguished gentleman with gray hair parted on the side, bifocals perched on his nose and a handkerchief protruding from his breast pocket. His one modern accessory, the cell phone on his belt, is hidden beneath his suit jacket.

"I enjoy very much not being in a high-rise in the middle of the city," Brault says. "We have three houses here and we have everything here now, but we continue with our same practice in D.C."

When Brault was admitted to practice law in D.C., today's city court system did not yet exist. Instead, Brault stood in the main courtroom of the U.S. District Court being sworn in by a federal judge. She concluded the ceremony by saying, "May your cause always be a righteous one."

"In those early years," Brault says, "I would have said the most rewarding thing was to win that case for that righteous cause you believe in." He pauses to rub his chin. "However, as I've gotten older and if I reflect backwards, maybe the most rewarding things I have done and still do are those things that actually affect law."

Brault has had plenty of opportunities to do so. He handles all of his own appeals, an oddity in today's age of specialization. "I've always felt that nobody's going to know the case like I do," he says. "If you hire someone else to handle my appeal I would say, 'You're going to pay them a fortune just to know the record that I already know.'"

Brault's daughter, Joan, a lawyer with his firm, recalls preparing cases for another Baltimore firm and discovering that the precedent-setting case that affected her own had been argued by her father. "Some of the cases he's had have effected real change in Maryland

law," she says. "I did a search to determine how many reported opinions he has. I don't remember the number now but it's a significant number. Somewhere between 100 to 200 cases. Closer to 200."

Though he now specializes in professional malpractice and commercial litigation, Brault, throughout his career, has handled all types of cases. His clients include top lawyers and surgeons and billionaire moguls, and he goes to great lengths to stay out of the spotlight. The cases he successfully defends seldom make it into the papers. When Lerner Enterprises needed to hire an outside lawyer to help with an issue involving multiple parties with multiple interests, their own lawyers suggested Brault. "When you first enter into a relationship with a lawyer, you have to place a great deal of trust in him," says principal owner Edward Cohen. "Al Brault has proven over the years that that trust was warranted. His understanding and ability to manage complicated business matters has been a tremendous asset to us."

Brault has been president of the Suburban Defense Lawyers Association, chairman of the Appellate Courts Judicial Selection Commission of Maryland, and a fellow of the American College of Trial Lawyers. For the past two years, he's also been the top point-getter of this magazine's list. "I called him demanding a recount," jokes last year's No. 2 man, Robert Michael, a partner at Shadoan, Michael & Wells. "But he has yet to respond."

Michael has argued against Brault many times in court and calls him one of the most—if not the most—effective defense lawyers in the state. "He is a real charmer and a very effective storyteller," Michael says. "He has a lot of little stories that he tells the juries that are unique to the community around here that the people understand, appreciate and identify with. ... They just respond to him. He is a figure that they respect and pay attention to and often do exactly what he wants."

Brault's courtroom manner is eloquent and articulate. He weighs his words and modulates his tone. He is dramatic but far from flamboyant. When facing a lawyer from a big firm, he likes to mention in his opening statement that he's "just a lawyer with this little law firm in Rockville."

BRAULT WAS BORN in Georgetown but grew up in Montgomery County, Md., where he has lived his whole life. His father was a defense attorney, who, during World War II, served as a substitute trial magistrate in Bethesda when the regular judge joined the Navy. As a child,



Brault still gets nervous before a case. "If you're not nervous you're overconfident," he says, "and overconfidence doesn't win anything for anybody."

Brault would walk over to the courthouse after school to watch his father. “I thought it was this big courtroom,” Brault recalls with a chuckle. “Turns out it was a little one. And what I thought were these horrendous crimes, they were misdemeanors—drunk in public, traffic offenses. They weren’t big deals, but I thought it was a big deal.”

The young Brault was filled with a desire to follow in his father’s footsteps. He was already named after the man. Albert E. Brault graduated from Georgetown Law in 1928; Albert D. Brault did likewise 30 years later. Both became defense attorneys practicing in Washington, D.C., and Maryland, and both have been instrumental in changing the rules and procedures under which lawyers operate. At times they changed the law itself.

In 1972, Brault’s father chaired the committee that organized the unified bar of the District of Columbia. Before that time, a grievance could be brought against a D.C. lawyer in federal court, but no system was in place to disbar anyone from the city courts. After unification, lawyers were finally sworn in through, and thus could be disciplined from, the city court system instead of the federal courts.

The younger Brault calls it “the most significant thing for the legal profession in the history of the city of Washington,” but he too would make his mark on the law books. Cases he has argued have created rulings on such things as mandatory arbitration, informed consent for patients and determination when cancer begins for legal purposes. Before Brault’s case, *Oxtoby v. McGowan*, the prevailing belief was that cancer began only when there was manifestation of the illness or after the patient discovered the illness. But the court ruled that cancer began at the first cellular change, and that point in time should be used when calculating the statute for mediation arbitrator and other procedural issues.

Brault also argued the case that created the missing witness rule. In *Christensen v. State of Maryland*, Brault was defending a client charged with assault and the state criticized him for not calling a witness. “One rarely wants to call, in defense of a crime, an eyewitness to your client committing the crime,” says Brault. “I challenged the state for doing that. It went up to the Court of Appeals. Our argument was you can’t make the defendant find witnesses to the crime that the defendant is accused of, and then criticize him for not calling them. The burden is on the government. The conviction was reversed and an opinion was written about the constitutional right of confrontation, the burden on the part of the government to prove, and no burden on the defense to prove anything. That was a long time ago. But it ended any effort by any prosecutor from trying to do that.”

Brault’s life could have been significantly different. His uncle, Adelard Brault, had a long career as a Virginia state senator and was referred to in the family as “the famous Brault.” Fascinated with politics and by his uncle’s success, Brault ran for the Maryland House



Brault’s father, Albert E. (left), chaired the committee that organized the unified bar in the District of Columbia.

of Delegates in 1966. He still has a poster on his wall from that election: *Go With Brault. He Cares*. Brault didn’t win but he did make plenty of connections, and four years later he was favored to win.

Then he heard from Thomas Anderson, a judge he knew and respected. “He told me, just as nice as can be, ‘Al, you can be a great lawyer and you can be a great politician, but you can’t be both.’ He smiled and shook my hand and walked out the door. And I went home and went, ‘God, I have to make a decision.’ And I dropped out of the race.

“I never ran for office again.”

Even without becoming a lawmaker, Brault has made a tremendous impact on the law. Besides the

numerous cases and appeals that established precedents, he has been a member of the Maryland Court of Appeals Committee on Rules of Practice and Procedure —“since Noah and the flood,” jokes committee chairman and retired Court of Appeals judge Alan Wilner.

Wilner adds: “Al has been one of the committee’s bright stars. He’s been in and out of courts, both state and federal, for [50 years], and so he brings that experience and knowledge of how the courts work and how lawyers work to the committee. When he weighs in, people listen. ... His opinions are particularly valuable in dealing with governing attorneys and judges and how they practice.”

“When you can take a rule or procedure and help get it grafted into the administration of justice,” says Brault, “and you know it is going to produce a good result not only for your client but for all clients, and that people in the courts are going to be treated better and fairer, that’s quite rewarding.”

One such change involves the application of Brady Material, so named from the *Brady v. Maryland* case, which ruled, in 1963, that prosecutors must turn over to the defense, in advance of trial, and on their own, all evidence that reflects on the defendant’s guilt or innocence. When Brault read a report from the American College that said Brady Material was often not being turned over to the defense, he got hot under the collar.

“Al gets very passionate with what lawyers properly should be doing and not doing,” Wilner says. “He really has a deep sense of civility and the way lawyers ought to act and behave themselves.”

So Brault raised the Brady issue with the rules committee and suggested that rules for discovery needed to be created to ensure the edict was followed. “All I did was introduce the problem,” says Brault. “And out of this came the most thoroughly considered, and I think brilliant, rules in criminal procedures in Maryland. Now the defendant can ask the state to produce a whole class of documents or information or anything that reflects on guilt and innocence, or on punishment, or on mitigation. We actually changed things that are going to be used every day in every court in Maryland in every criminal prosecution.”

He pauses. “And to think that some little ol’ lawyer in Rockville had a role.” ◀