

**AN EXTRAORDINARY LIFE SPAN:
A SUMMARY AND ANALYSIS OF AN ORAL HISTORY OF
THE HONORABLE WILLIAM A. McCLAIN**

*UNITED STATES ARMY (1943–1946)*¹

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*I believe in a greater humanity that transcends race,
color, and creed. Therefore, I believe in the Black
Man's Destiny—that somewhere, sometime in this land
of ours, though black-skinned and kinky-haired, he shall
climb the mountains of life, hand in hand with his white
brother, and emerge above the clouds of blackness into
the sunlight of freedom and social justice.*²

I. Introduction

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¹ Major Jim Gibson & Major Stacy Flippin, *An Oral History of William A. McClain*, (2003) [hereinafter *Oral History*] (unpublished manuscript, on file with The Judge Advocate General's School Library, United States Army, Charlottesville, Virginia). The manuscript was prepared as part of the Oral History Program of the Professional Communications Department at The Judge Advocate General's School, Charlottesville, Virginia. The oral history of the Hon. William A. McClain is one of over seventy personal histories on file with The Judge Advocate General's School Library. They are available for viewing through coordination with the School Librarian, Daniel Lavering, and offer a fascinating perspective on key leaders whose indelible influence continues to this day. Mr. McClain died on Tuesday, February 4, 2014. He was 101 years old.

² William A. McClain, *Our Scroll of Destiny* (Apr. 28, 1934), in *Oral History*, *supra* note 1, app. C, at 8.

William A. McClain was a World War II era African American Judge Advocate. While his longevity in years is noteworthy by itself, more so is the scope of his achievements and the constellation of personal connections he forged. Born into poverty in the Jim Crow South, he rose to become an accomplished orator, lawyer, judge advocate, city solicitor, state court judge, and leader in the civil rights movement. Along the way, he broke down racial barriers, often with the help of white teachers and colleagues, as well as the personal involvement of a governor, senator, and future Supreme Court Justice. Many of his professional accomplishments occurred in the City of Cincinnati, a conservative bastion, and hotbed for racial unrest.³

This article is a summary and analysis of interviews conducted with the Honorable William A. McClain in 1999 and 2003, interviews later transcribed and bound in *An Oral History of William A. McClain*, which is maintained at the Library of The Judge Advocate General's Legal Center and School, United States Army, Charlottesville, Virginia.⁴ The article introduces Mr. McClain by discussing the personal challenges he overcame, along with the professional experience and accomplishments he amassed, while identifying the character attributes that contributed to his success. In particular, this article highlights his ability to forge relationships, transcend boundaries, and serve as an example of leadership.

II. Early Life, Education, and Background

A. A Humble Upbringing

William A. McClain was born in Sanford, North Carolina, on January 11, 1913. He was born out of wedlock to a teenage mother; his father could not read or write.⁵ During his early childhood, he and his

³ See generally John Kiesewetter, *Civil Unrest Woven into City's History*, CINCINNATI ENQUIRER, July 15, 2001, available at http://www.enquirer.com/editions/2001/07/15/tem_civil_unrest_woven.html. See also Kevin Osborne, *Reflections on Riots & Race—A Decade Later, Differing Views Persist on Causes, Aftermath*, CINCINNATI CITY BEAT, Apr. 6, 2011, available at http://www.citybeat.com/cincinnati/article-23047-reflections_on_riots.html.

⁴ The Library Catalogue is accessible at <http://www.jag.iii.com>.

⁵ *Hundreds Celebrate Judge's 100th Birthday: Judge William McClain Turned 100 Years Old Friday* (NBC WLWT broadcast Jan. 13, 2013), available at <http://www.wlwt.com/wlwt.com/news/local-news/cincinnati/Hundreds-celebrate-judge-s-100th-birthday/-/13549970/18115716/-/w0comz/-/index.html#ixzz2RD4PtHJJ>.

mother moved to Springfield, Ohio, to live with his maternal grandmother, Eva Duvall. For a time, McClain's grandmother raised him and his mother, just fourteen years his senior, "almost as siblings."⁶

In Springfield, the family lived in a five-room house without utilities or even a phone. Though eventually they did get electric light, through high school McClain would study by lamplight. All in his household had no more than a fifth grade education and were not able to provide much by way of cultural or civic discourse during his formative years. McClain credits a white school teacher at Elmwood Elementary School, Augusta Wiegler, as imparting to him what he describes as his first defining moment.⁷ With her support, McClain began to buckle down at school and took an interest in learning and academic accomplishment that would serve him for a lifetime. Though "separate but equal" was the law of the land then and beyond, as set out in *Plessy v. Ferguson*,⁸ McClain never attended a segregated school and never had an African American teacher through high school. He attended Springfield High School and, though it was an integrated school, he was one of only five African Americans in a class of approximately three hundred.⁹

McClain finished near the top of his class, graduating with honors in 1930. That same year, he received a scholarship to Wittenberg College in Springfield, now Wittenberg University. Though not on a full scholarship, McClain was able to focus on his studies, thanks in no small

⁶ Barry Horstman, *William McClain at 100: A Legacy of Firsts*, CINCINNATI ENQUIRER, Jan. 10, 2013, at C5. When McClain was about twelve, his mother remarried and "became a positive force." *Id.* See also Oral History, *supra* note 1, at 2.

⁷ Oral History, *supra* note 1, at 2–5.

One day I was in the playground playing and being very [mischievous] with a lot of black youngsters, and I was trying to be the baddest guy on earth. And she called me in and told me, she says, ["Bill, you know, you're not like the others. . . . [Y]ou have an opportunity to make it in life . . . I'm expecting you to be a very good student.[]"] And she began to take me to give me a cultural experience by taking me to movies and operas and to things of culture and invite me down to her house. And she inspired me.

Id. at 2.

⁸ 163 U.S. 537 (1896) (upholding the constitutionality of a Louisiana law mandating "equal but separate accommodations for the white and colored races"), overruled by *Brown v. Bd. of Ed.*, 347 U.S. 483, 495 (1954) (concluding "that in the field of public education the doctrine of 'separate but equal' has no place").

⁹ Oral History, *supra* note 1, at 3–4.

part to personal loans his grandmother, a domestic servant, took out for his education.¹⁰ He also worked to support himself by taking a job as a waiter at a Wittenberg fraternity and by doing yard work for white families. McClain was the only African American among the student body during his freshman year. While somewhat isolated among a campus of around eight hundred, McClain received vital support through his local African Methodist Episcopalian church, both for book costs and in developing the public speaking skills that would soon garner national recognition.¹¹

B. Finding His Voice and Transcending Race

As a child, McClain had a stammer and a stutter. He began working on his speaking skills at evening Sunday school services featuring discussions and formal debate. Despite still being “a little raw,” a pastor and a religious studies student began coaching McClain and he competed in an annual oratorical competition.¹² Though McClain never won that contest, it gave him valuable experience.¹³

Despite this preparation, during his freshman year, when McClain tried out for Wittenberg’s debate club, he was not accepted. Fourteen of his white counterparts had been chosen, but from this rejection, McClain received a blessing: a philosophy about himself and about race.

[I]f I ever failed in white competition as I did in class to accomplish what I wanted to accomplish, I always

¹⁰ Eva Duvall, McClain’s grandmother, was his “main supporter and the real inspiration[.]” in his life. *Id.* app. A, at 1. From her he learned the importance of being well-dressed and maintaining a sharp appearance, an attribute he would be known for throughout his life.

She said for every “A” I got in school she’d get me a pair of argyle socks. . . . I had a lot of argyle socks. So I always believe in good public appearance. Sell yourself. You see, sometimes your first impression may be your last impression. It could be your last chance. You have some persons [who] don’t like you from the get-go [then] you’re through. You’ve always got to survive that first impression.

Id. at 155–56.

¹¹ *Id.* at 5–8.

¹² *Id.* at 8.

¹³ *Id.* at 9.

eliminated at first all the non-racial reasons; did I study hard enough, did I work hard enough. I never tried to give an excuse—a racial reason. . . . I didn't use black as an excuse. And I didn't have at that time, and still don't have, the philosophy of the underdog. Victimology . . . I didn't have that. And that was lucky for me. It made me highly competitive.¹⁴

Undeterred—in fact motivated—McClain took every speaking course offered at Wittenberg. He received As in each. By his junior year, he had been able to correct, but not to eliminate, his stammering and was offered a place on Wittenberg's oratorical squad.¹⁵

During the first squad meeting, McClain was singled out among the group. Though the rest of the students were free to pick their own topic, Dr. Paul Brees, a professor in the Speech and Drama Department, told McClain to devote his oration to the issue of race. He was thrown—unsure of how he could compete against white students, in a white setting, by crafting a message on a subject likely to be unwelcome, and delivering it as the lone African American. Though familiar at an early age with W.E.B. DuBois,¹⁶ this was the 1930s; the iconic speaker on race of the 20th Century, Martin Luther King, Jr., was still a child at this point, the mountaintop was not yet a dream, and televised examples of rhetoric did not exist. With no further instruction from Dr. Brees, McClain set out to define for himself the race issue. He read the orations of past national contest winners, read every book he could on the issue of race, and began drafting his speech over the summer.¹⁷

When classes resumed in September, and the oratorical squad had their first meeting of the year, McClain was “the first in the class to complete his research and his writing and was ready for Dr. Brees's critical review before anyone else.”¹⁸ The following day, Brees sat McClain down and began,

Bill, this is the best speech I've ever read on the race problem. I've read a lot of them and heard a lot of them.

¹⁴ *Id.* at 9–10.

¹⁵ *Id.* at 10–11.

¹⁶ Trevor Coleman, Editorial, *A Well-Deserved Honor for A U-M Legal Barrier Breaker*, DET. FREE PRESS, Apr. 26, 2002, at A10.

¹⁷ Oral History, *supra* note 1, at 11–15.

¹⁸ WILLIAM A. KINNISON, MODERN WITTENBERG 66 (2011).

. . . [N]ow, we're going to have to take and groom you and get rid of your defects and hone you into a good speaker. And if this works then I have to go to [Wittenberg's] President and ask him can you represent Wittenberg. And I have to tell the others that you're the one.¹⁹

The selection of William McClain as Wittenberg's entrant in the Old Line Oratorical Contest would not be official that quickly or that easily, however. Before McClain would be chosen, he had to be honed and polished as an orator. Over the final months of 1933, the two rehearsed in secret; McClain spent hours refining his delivery before the mirror, and in the end, Brees had no trouble following through on his word. He notified Wittenberg's President, Dr. Rees Edgar Tulloss, that McClain was the proposed nominee for the intercollegiate competition.²⁰

Dr. Tulloss was not known for his support of civil rights,²¹ but appeared content with McClain as the nominee. Dr. Brees went on to notify rival coaches of Wittenberg's unconventional selection of an African American as its competitor, and then the rest of the oratory squad, whose reactions ranged from shock to surprise, as McClain recalled it.²² The rest of the college community had its misgivings as well.²³ On February 9, 1934, McClain addressed a packed house at the chapel in Recitation Hall.²⁴ His speech, "Our Scroll of Destiny" won over the audience and they gave him a standing ovation. McClain remembered it as the greatest moment of his life.²⁵

¹⁹ Oral History, *supra* note 1, at 15.

²⁰ *Id.* at 16–17.

²¹ KINNISON, *supra* note 18, at 67.

²² Oral History, *supra* note 1, at 17.

²³ KINNISON, *supra* note 18, at 66–67. This may have factored into the timing of McClain's debut of his speech to Wittenberg College. Traditionally, the nominee delivered a preview of his presentation the day before to departing for the contest, but McClain was scheduled to do so several days in advance. Oral History, *supra* note 1, at 17. The administration may have been hedging its bet on McClain, affording itself enough time to change course. It may have been concerned about the student body rejecting the notion of one of its, by then total of two, African American students acting as representative for the whole student body. *Id.* at 7. See also KINNISON, *supra* note 18, at 66–67.

²⁴ KINNISON, *supra* note 18, at 66.

²⁵ Oral History, *supra* note 1, at 17.

From Wittenberg, McClain went to the Ohio statewide competition at Muskingum College in New Concord. He met and faced off with contestants and coaches from all over the state, and advanced through six elimination contests to win the Ohio orator championship. He was the first African American and the only Wittenberg student to do so.²⁶ But as an African American, during the competition, he was not allowed to stay on the campus of Muskingum College, or at any boarding house in New Concord, and instead stayed at the home of a school janitor.²⁷

Even as McClain advanced to the national competition to deliver his message that the color of a man's skin is not a test for his Americanism,²⁸ and that character should not be swept aside due to color,²⁹ he faced race-based prejudice in everyday life. While driving to Northwestern University in Evanston, Illinois, along with Dr. Brees, Mrs. Brees, and their children, the group stopped at a roadside restaurant. McClain was told by the proprietor that he could not eat in the dining area and McClain withdrew to the kitchen while the Brees were seated. The Brees' son went to the kitchen to check on McClain and ended up sitting down to join him in the kitchen. Soon, the Brees sat down in the back as well. Curious, the proprietor asked what was going on, and upon learning of McClain and the purpose of his travel, declared that lunch would be on the house.³⁰

At the Nationals, McClain was the fifth of six speakers. The final speaker was James Pease from Indiana who had won two other oratorical contests,³¹ and was strongly favored to win. When Pease took second place, even before McClain's name was announced, the crowd began applauding, and once he was declared the winner, "bedlam just broke loose."³² The only black contestant, the poor boy from Springfield—who was forced to stay at the local black YMCA off of the Northwestern

²⁶ Amy M. Borrer, *Breaking Down Barriers: One Member's Journey Through Life and Law*, OHIO LAW., July/Aug. 2003, at 7.

²⁷ KINNISON, *supra* note 18, at 67.

²⁸ William A. McClain, *Our Scroll of Destiny* (Apr. 28, 1934), in Oral History, *supra* note 1, app. C, at 6.

²⁹ *Id.* at 7.

³⁰ Oral History, *supra* note 1, at 19.

³¹ Wilbur Lloyd, THE SCROLL OF PHI DELTA THETA, June, 1934, at 284–85 (noting that after Pease won the Indiana state competition he won at the national Pi Kappa Delta convention, besting five other state winners).

³² Oral History, *supra* note 1, at 21.

campus while competing—was the 1934 National Interstate Oratorical Association competition champion.³³

McClain returned triumphant to Wittenberg and was chosen to deliver the annual Oak Oration address during his commencement in June.³⁴ Still, Wittenberg remained resistant to changing its official race policies. Fraternities aside, membership in twenty-six organizations was closed to African Americans. The policy precluding residence in college dormitories would not be placed on the school's agenda for eradication for another fifteen years.³⁵ McClain remained undeterred, and was not bitter, observing nearly seventy years later:

You have to believe in people. I believe that if you have somebody . . . that sees something in you . . . will help you—and that's been my life. So I didn't get involved in all this hating white folks business because white folks had helped me. . . . They helped me though high school. They helped when I was in college. I always had people who helped me because they saw something in me to help me. And I have a philosophy that if you have opportunities you should exhaust all the opportunities and chances that you have. And when they're gone others will multiply if you're interested in yourself and you present yourself as a person who wants to be somebody, somebody will help you. I've found that to be true.³⁶

C. University of Michigan Law School

Though he had applied and been accepted to Harvard and the University of Chicago, McClain chose to attend the University of Michigan based on his personal relationship with an alumnus. As a high school student, he had spent summers working in the office of an African American lawyer in Springfield, Sulley James. James had attended the

³³ *Id.* at 20–21.

³⁴ KINNISON, *supra* note 18, at 375.

³⁵ *Id.* at 67.

³⁶ Oral History, *supra* note 1, at 48.

University of Michigan School of Law and was McClain's inspiration to become a lawyer.³⁷

Despite the path blazed some 33 years earlier by Sulley James, McClain and others continued to come face-to-face with racism while at the University of Michigan. Six months after he had taken the nation by storm at the oratorical championship, McClain observed the treatment of Willis Ward, a track and football star who would later become a friend. Ward's example of grace while literally benched by bigotry³⁸ would inspire McClain to overcome the racism of a teammate in Ann Arbor, and of his fellow lawyers in Cincinnati. Before those times would come, and as had been the case at Wittenberg, McClain was prevented from living in a dormitory on the University of Michigan campus. The only African American in a class of 450, both written and unwritten rules kept him isolated from the Lawyers Club dormitory, part of the law school quadrangle. He was held at arm's length from the social, professional, and fraternal advantages his classmates enjoyed. With joining and participating in a study group unworkable, McClain was left largely on his own.³⁹

Even within these constraints, McClain participated in the Henry M. Campbell moot court competition his first year. He was paired with another student, from the South, who balked at the notion of working with an African American. Fortunately, a Jewish student agreed to step in as McClain's partner, arguing two cases. The following year, the two won second place; McClain figures it was not quite the "time for a Negro and a Jew to win."⁴⁰ Still, as one of the four top finishers, McClain was to sit as a student judge his final year, and would have his tuition paid for his service.⁴¹ A position as a judge was especially valuable for McClain;

³⁷ *Id.* at 7, 22.

³⁸ *Id.* at 174. In October 1934, the University of Michigan was slated to host Georgia Tech, and Ward was Michigan's best player, as well as one of the best-known college football players in America. Brian Kruger & Buddy Moorehouse, *Willis Ward, U-M and An Honor Whose Time Has Come*, DET. NEWS, Oct. 11, 2012, at B3. Georgia Tech refused to play the Wolverines unless Willis Ward was benched. Though his teammates cried foul when the Michigan coaches acceded—and one, future President Gerald Ford, temporarily quit the team—Ward decided on his own to sit out the game, asking his teammates to take the field. *Id.* See also Gerald R. Ford, *Inclusive America, Under Attack*, N.Y. TIMES, Aug. 8, 1999, at 15.

³⁹ Oral History, *supra* note 1, at 28. See also William McClain, Editorial, *Level U-M's Playing Field at Last*, DET. FREE PRESS, Apr. 17, 2001, at A7.

⁴⁰ Oral History, *supra* note 1, at 24.

⁴¹ *Id.*

though he had a few hundred dollars set aside, without the currency of the judgeship he may not have been able to pay the rest of his way through law school.⁴² It is even more telling, then, how McClain chose to share his good fortune. Beyond the finalists, a fifth judge's position was available, and the top four finishers could select who would be named. At McClain's insistence, the white Southern student who had refused to partner with him was selected.⁴³

So everybody was shocked in law school that I turned my cheek. But I called him to tell him that he was . . . under consideration. I said, ["Y]ou know you wouldn't sit with me—wouldn't argue with me last year. All right, are you willing to sit on the bench with me?["?"] So he said, yes. And he apologized very profusely. And we became very, very good friends.⁴⁴

McClain and his one-time rival, also named Bill, would remain friends for decades until the latter's death, in 2000.⁴⁵ These experiences in adolescence and early adulthood informed McClain's attitude and professional outlook throughout his life and career.

D. Early Career

The only African American in his class, McClain graduated from the University of Michigan School of Law on June 9, 1937.⁴⁶ He returned to Springfield to take the bar exam, but missed passing by a few points.⁴⁷ Though he loved Springfield, McClain felt that it was too small and rural for him to be able to succeed financially and nearby Cincinnati offered more opportunities.⁴⁸ Without funds to re-take the exam, McClain was

⁴² Julie Kemble Borths, *Retired Judge William McClain Found Path by Exceeding Expectations*, CINCINNATI HERALD, Nov. 6, 2010, available at http://www.thecincinnatiherald.com/news/2010-11-06/Front_Page/Retired_Judge_William_McClain_found_path_by_exceed.html.

⁴³ McClain, *supra* note 39.

⁴⁴ Oral History, *supra* note 1, at 25.

⁴⁵ *Id.* at 25–26. See also McClain, *supra* note 39.

⁴⁶ McClain, *supra* note 39.

⁴⁷ Kemble Borths, *supra* note 42.

⁴⁸ Oral History, *supra* note 1, at 40.

taken in by a Cincinnati attorney, a man McClain came to call benefactor, law partner, and friend.⁴⁹

It would be nearly impossible to tell the story of McClain's arrival to and life in Cincinnati without discussing Theodore M. Berry, himself a pioneer in civil rights, known to some as "Mr. Cincinnati."⁵⁰ Berry served on the Cincinnati City Council, as vice mayor, and in 1972 was elected the city's first African American mayor. McClain first met Berry following the 1934 national oratorical contest. The Cincinnati NAACP began its first of a series of monthly radio broadcasts on the local WKRC radio station, and featured McClain as the debut subject on July 29th.⁵¹ Berry was among the series' sponsors,⁵² and McClain found in him a kindred spirit, a potential mentor or partner with whom to pursue shared ambitions and goals.⁵³ The day McClain was admitted to the Ohio bar in February of 1938, he became a part of Berry's law firm.⁵⁴

Eager to begin his practice focusing on civil rights matters, McClain encountered forces on all sides that would lead him to shift his approach.

So when I came down into Cincinnati it was the most prejudice[d] town in the country. When I got off the train at Union Terminal the yellow cabs would not pick me up and ride me. I hailed down a black cab to take me where I was going. And I came into Mr. [Berry's] office as an associate. And at that time black lawyers were not well thought of. They practiced in police court and

⁴⁹ Amanda Chalifoux, *Judge McClain Reflects on Lifetime of "Firsts,"* UNIV. MICH. SCH. OF L., L. QUADRANGLE, Spring 2011.

⁵⁰ Tom O'Neill, *Ted Berry, Mr. Cincinnati, Dies at 94*, CINCINNATI ENQUIRER, Oct. 16, 2000, available at http://enquirer.com/editions/2000/10/16/loc_ted_berry_mr.html. Also born to an unwed mother and a father he hardly knew, Ted Berry achieved early success, and met with resistance based on his race. His high school valedictorian, Berry was forbidden to walk alongside his white classmates in the graduation procession. After completing law school at the University of Cincinnati, Berry became the first African American assistant prosecutor in Hamilton County. He was president of the local chapter of the National Association for the Advancement of Colored People (NAACP), an office McClain would also hold from 1940 to 1942. *Id.* See also Oral History, *supra* note 1, app B, at 9.

⁵¹ Press Release, Cincinnati Branch News of the NAACP (n.d.) (on file with author) (obtained from the personal papers of William McClain maintained by the Cincinnati Museum Center).

⁵² *Id.*

⁵³ Oral History, *supra* note 1, at 42.

⁵⁴ *Id.* app. B, at 2.

traffic court, minor offenses. And they never had major cases. And the bench didn't think much of them. And the bar didn't think much of them. And we couldn't join the Cincinnati Bar Association. Although the Cincinnati Bar Association was the authority that supervises, we couldn't belong because we were black.⁵⁵

Not long after he began practicing, McClain was arguing a civil rights case before a local judge, Stanley Struble, who would later serve as a significant influence.⁵⁶ After the trial, Struble asked McClain to his chambers and offered what was at first an unwelcome observation. Judge Struble noted that McClain was spending a great deal of effort on civil rights and racial matters, pouring his energy into a single area of focus. Putting it bluntly, Struble said, "You're an outstanding *black* lawyer Why don't you use your talents and try to become an outstanding *lawyer*?"⁵⁷ At first, McClain was discouraged, thinking he was being dissuaded from pursuing a cause of great personal importance.⁵⁸ But later, a client he had represented on several small matters, paying on an installment basis, was involved in an accident in which the other party was clearly at fault. When McClain heard his client was injured and contacted him, the young attorney was soon disappointed to learn that the client he had stood beside for so long was looking for other representation. Because African American attorneys were not well respected by the courts, the client was looking for a white lawyer to handle the case. Reflecting on Judge Struble's words, and confronted with the low esteem members of his race held within the profession, he would leave the civil rights issues for his law partner. McClain elected to focus on his own abilities as a practitioner, in the hopes of raising the esteem for African American lawyers in the eyes of Cincinnati's courts and citizens.⁵⁹

Determined to branch out, McClain took an interest in the Cincinnati Solicitor's Office. He submitted and re-submitted an application for a job, at one point seizing upon a news report of a pending vacancy in

⁵⁵ Oral History, *supra* note 1, at 41.

⁵⁶ *3 Greats Battled Barriers—McClain, Scripps, Sewell Honored By Chamber*, CINCINNATI ENQUIRER, Dec. 21, 2002, available at http://enquirer.com/editions/2002/12/21/loc_greatest21.html (announcing McClain as one of three recipients of the Great Living Cincinnati award and highlighting Judge Struble as an influence).

⁵⁷ Borror, *supra* note 26, at 7 (emphasis in original).

⁵⁸ Oral History, *supra* note 1, at 42.

⁵⁹ *Id.* at 41–43.

order to press John Ellis, the City Solicitor, for a position.⁶⁰ After several months, his efforts met with success, and in February of 1942 he became the first African American assistant solicitor for the City of Cincinnati.⁶¹ Though the early going was not easy, neither was it all focused on his legal career. McClain was fortunate to meet the best friend of Berry's secretary, Roberta White, whom he would later marry.⁶² The two would spend over 65 years together until her death in 2011.⁶³ Though often separated by McClain's military service, the two began their married life together during the second World War.

III. Army Service

With World War II already underway, and the United States heavily involved in the war effort, McClain was soon called upon to serve. He was drafted and ordered to report for military service on October 13, 1943. John Ellis submitted a leave of absence for McClain two days before.⁶⁴ Though his contemporaries were receiving direct commissions into the Navy, or even the Army, McClain found himself 30 years old, a practicing attorney for six years, and a "buck private."⁶⁵ He remembered it as the saddest moment of his life.⁶⁶

He soon warmed to the military experience in ways he had not anticipated. Though surrounded by younger soldiers during basic training at Sheppard Field in Northern Texas, McClain was running alongside them and keeping up. He found an athleticism that had eluded him in his younger years, and his height of 5' 5"⁶⁷ seemed to no longer hold him back. Moreover, he grew into himself in other ways. Apart

⁶⁰ Letter from William A. McClain, to John D. Ellis, Solicitor of City of Cincinnati (Sept. 25, 1941) (on file with author).

⁶¹ Oral History, *supra* note 1, app. B, at 2.

⁶² Kemble Borths, *supra* note 42.

⁶³ Horstman, *supra* note 6, at C5.

⁶⁴ City of Cincinnati, Interdepartment [sic] Correspondence Sheet from John D. Ellis, Solicitor, to Walter V. Majoewsky, City Personnel Officer (Oct. 11, 1943) (on file with author) (requesting that McClain "be granted leave of absence without pay effective as of" his report date).

⁶⁵ In 1943, it became increasingly difficult for all branches of the Army to offer direct commissions due to War Department constraints. See Fred L. Borch, *An Officer Candidate School for Army Lawyers?—The JAG Corps Experience (1943–1946)*, ARMY LAW., July 2012, at 1.

⁶⁶ Oral History, *supra* note 1, at 44–45.

⁶⁷ *Id.* at 3.

from a familiarization with the Army, his six weeks of basic training, in a segregated setting, afforded him his first total emersion in African American culture. Previously, as the only, or one of a few, African Americans in school, his only contacts with African Americans outside of the home was in churches or limited social settings.⁶⁸

I had never had any real exposure to the black underclass. But in the Army I was in it with the black underclass. They taught me how to curse. They taught me how to gamble. They taught me all the things that blacks do, you know. And I began to understand more of my own culture than I understood before.⁶⁹

After Sheppard Field, McClain was sent to Air Force mechanics school at Clarion Field near Denver, Colorado. Though McClain grasped the theoretical aspects of the training, and received positive evaluations, he did not take as well to the technical areas of emphasis during the training. Fortunately, he did not spend a great deal of time turning wrenches, thanks to his ability to exert leverage in other ways. Though the details are unclear, McClain requested assistance in accession to the Judge Advocate General's (JAG) Department⁷⁰ through Senator Robert A. Taft of Ohio.⁷¹

Though McClain did not hear back from Taft's office, he eventually received orders to leave mechanics school before training was complete. He spent a brief period of time at Tuskegee Air Field in Alabama before learning that he had been accepted into the JAG Department. While at

⁶⁸ *Id.* at 45–47.

⁶⁹ *Id.* at 46.

⁷⁰ At this time the JAG Corps was known as the JAG Department. The name changed as a result of the Act of June 24, 1948. *See* UNITED STATES ARMY, THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775–1975, at 198 (1975); Borch, *supra* note 65, at 1.

⁷¹ It would not have been the first time Senator Taft had heard of William McClain. McClain's law partner, Ted Berry, had been recommended to Ohio's Governor, John Bricker, for appointment to the Ohio Defense Council, in order to represent the interests of African Americans in Ohio on defense related matters. When Berry's appointment foundered in the Hamilton County Committee, he contacted Taft for assistance and Taft intervened. Letter from Senator Robert A. Taft, to Theodore M. Berry (Nov. 28, 1941) (on file with author). The letter of thanks to Senator Taft for his personal intercession, sent on Lawson, Berry, and McClain letterhead, was dated days prior to the bombing of Pearl Harbor. Letter from Theodore M. Berry, to Senator Robert A. Taft (Dec. 3, 1941) (on file with author).

Tuskegee, McClain encountered African American officers for the first time, including then-Colonel Benjamin O. Davis, Jr. When he reported for the 7th Judge Advocate General's Officer Candidate School (JAGOCS) at his alma matter, the University of Michigan,⁷² McClain would be one of only two African American officer candidates in attendance, the other being Robert Ming, a University of Chicago graduate.⁷³

Though the Army was still segregated along racial lines, JAGOCS was blended in several ways. Blocks of instruction focused on marching, military bearing, weapons familiarization, and land navigation, as well as substantive classroom legal training.⁷⁴ Within the classrooms, officers and enlisted students sat side by side.⁷⁵ Most significant for McClain, as a member of the military, he was finally able to live and dine in the law school quadrangle. The experience went a long way to alleviate the negative experiences from his student days at the University of Michigan.⁷⁶

On September 7, 1944, McClain graduated JAGOCS and received a commission as a second lieutenant.⁷⁷ He and Ming were among the first few African American candidates to complete JAGOCS⁷⁸ and to become

⁷² Oral History, *supra* note 1, at 50. In August 1942, the Judge Advocate General's School, U.S. Army (TJAGSA) was activated at the University of Michigan. The following year, the Judge Advocate General's Officer Candidate School was established to enable enlisted Soldiers to obtain branch training and to receive commissions as first or second lieutenants. *See generally* Borch, *supra* note 65, at 1.

⁷³ Even before his accession into the JAG Department, pioneering civil rights lawyer William Robert Ming, Jr. was an accomplished attorney. While still a Private, he was furloughed to handle a case before the United States Supreme Court. After leaving the Army as a captain, he worked with Thurgood Marshall on the briefs in *Brown v. Bd. of Ed.*, 347 U.S. 483, 495 (1954). In 1960, Ming was part of the trial team that defended Martin Luther King, Jr. on perjury charges related to tax evasion. The team obtained an acquittal from an all-white jury in Montgomery, Alabama. Ming himself was later prosecuted for failing to file income tax returns and, despite paying back taxes and filing the returns, was sentenced to sixteen months in federal prison. In declining health, he was released to a veteran's hospital in Chicago before his death in 1973. *See* Jim McElhatton, *Standing on 'the Shoulders of Bob Ming,'* WASH. TIMES, Dec. 7, 2008, available at <http://www.washingtontimes.com/news/2008/dec/7/standing-on-the-shoulders-of-bob-ming>.

⁷⁴ Borch, *supra* note 65, at 3.

⁷⁵ *Id.* at 1.

⁷⁶ Oral History, *supra* note 1, at 108–09.

⁷⁷ *Id.* app. A, at 11–12.

⁷⁸ Oral History, *supra* note 1, at 27.

JAG officers.⁷⁹ Though their numbers were small, there were still challenges in finding assignments for these young officers. One individual not just instrumental to McClain's assignment and that of his peers in the JAG Department, but important to the overall integration effort was Truman Gibson,⁸⁰ a friend of Bob Ming and chief adviser on racial affairs to Secretary of War Henry L. Stimson. Assignments at that time were delicate matters due to segregation and Gibson worked behind the scenes to look after African American Soldiers.⁸¹

McClain's first assignment was to the relative safety of the Office of The Judge Advocate General in Washington, D.C., where he reviewed courts-martial before they went to boards of review. As McClain's six years of legal experience were primarily in civil practice, this initial six-month assignment was a good transition. The biggest threat he faced in D.C., it turned out, was the gender disparity. With so many men away fighting, the ratio of women to men in the capitol appeared to McClain to be one hundred to one. Though he enjoyed the social scene, he missed the young secretary he had met in Cincinnati. At one point he phoned Roberta and said, "You better come down here and marry me because it's rough down here." The two were wed on November 11, 1944, in the chapel at Howard University.⁸²

⁷⁹ *Id.* app. B, at 10. Messrs. Ming and McClain were trailblazers, but the first African American judge advocate, Major Adam E. Patterson, to enter the JAG Department did so during the previous world war. Major Adam E. Patterson was commissioned a judge advocate in 1918.

⁸⁰ Oral History, *supra* note 1, at 53–58. See also Richard Goldstein, *Truman Gibson, Who Fought Army Segregation, Is Dead at 93*, N.Y. TIMES, Jan. 2, 2006, available at <http://www.nytimes.com/2006/01/02/national/02gibson.html>.

⁸¹ Gibson described the racial situation in a 2002 interview with the Columbus Dispatch in this way:

It was complete, absolute segregation. . . . The training facilities were in the South. The attitude was that Southern officers understood "those people." White bus drivers in military towns were deputized and armed. That was their approach to handling Southern black soldiers. I tried to put out fires. We were dealing with the killing of black troops.

Goldstein, *supra* note 80.

⁸² Oral History, *supra* note 1, at 58–60.

From the banks of the Potomac, and now with his wife at his side, McClain moved to his next assignment at Fort Huachuca, Arizona, where he served as a trial counsel. It was Roberta's first introduction to military life on an installation; the two lived in on-post quarters, and she kept busy working with the Red Cross. The two found a social network among the officers assigned to a largely African American medical group, all of whom outranked McClain. As junior as he was, McClain was the only prosecutor on the installation, trying many cases against line officers serving as defense counsel. He felt that the trial outcomes were generally fair, and that if panels were biased at all, it was to the benefit of the accuseds. There were no high-profile cases and the bulk of his workload amounted to what would be called misdemeanors back home, and few of his cases involved white accuseds.⁸³

After only a few months at Fort Huachuca, Roberta returned to Ohio when McClain was transferred to the less settled Godman Air Field in Kentucky. Godman was the location of the 1945 court-martial of three African American officers accused of shoving a Provost Marshal guard while they, along with 98 others, challenged the segregation of an Officer's Club at Freeman Field, Indiana. The three forced their way into the club; all 101 had been arrested, flown to Godman, and confined to quarters for refusing to sign an acknowledgement that they had read and understood a base regulation which effectively segregated the Officer's Club.⁸⁴ Twenty-two years before he would break the color barrier in the Nation's highest court as the first African American Justice, Thurgood Marshall, at the time serving as the NAACP's national legal counsel, urged McClain's former law partner Ted Berry to defend the Freeman Field Officers; two were acquitted.⁸⁵

When McClain arrived at Godman Field sometime two weeks later, he detected no lingering effects while serving as legal advisor for then Colonel Benjamin O. Davis, Commander of the 477th Fighter-Bomber Composite Group. The two did not have a close working relationship,

⁸³ *Id.* at 61–66, 77.

⁸⁴ CHARLES E. FRANCIS, *THE TUSKEGEE AIRMEN: THE MEN WHO CHANGED A NATION* 241–43(1997). For further details, see Major John D. Murphy, *The Freeman Field Mutiny: A Study in Leadership* (March 1997) (research paper for Air Command and Staff College), available at <http://www.dtic.mil/cgi-bin/GetTRDoc?Location=GETRDoc.pdf&AD=ADA397891>; http://www.au.af.mil/au/awc/awc_gate/acsc/97-0429.pdf.

⁸⁵ Theodore Berry, 94, *Civil Rights Pioneer, Dies*, N.Y. TIMES, Oct. 17, 2000 available at <http://www.nytimes.com/2000/10/17/national/17BERR.html>.

which McClain attributed to their disparity in rank.⁸⁶ But McClain, now a First Lieutenant, was nonetheless impressed with the bearing, pride in appearance, and emphasis on discipline Davis exuded.

[H]is idea was that we were Afro-Americans so we couldn't make any kind of mistakes. So you got to play it more than to the rule. He was a stickler to doing it to the letter of the law. And he always told them that ["if you're going to do anything that is not military, go away from the flagpole. Get the hell off the base.["⁸⁷

In 1946, with the war winding down, McClain returned to Ohio when Davis and the 477th moved to Lockbourne Airfield near Columbus. Though working for Davis, the most disciplined military man McClain had ever met, had been a wonderful experience, McClain opted at Lockbourne not to make the Army a career and returned to Cincinnati.⁸⁸ He was honorably discharged on May 24, 1946.⁸⁹

⁸⁶ Oral History, *supra* note 1, at 74. It may have also been the Freeman Field Mutiny and politicization of the ensuing court-martial which led Davis to maintain a distance from his military justice adviser during this time. Shunned while a cadet at West Point, Davis regarded having been refused entry at a Fort Benning Officer's Club during his first duty assignment as "one of the most insulting actions taken against him in 37 years of military life." Richard Goldstein, *General Benjamin O. Davis Jr. Dies at 89*, N.Y. TIMES, July 06, 2002, available at <http://www.nytimes.com/2002/07/06/us/general-benjamin-o-davis-jr-dies-at-89.html>. Upon being chosen by the Convening Authority to sit on the Freeman Field panel, and being the senior member, Davis was concerned that the findings in the case could hurt his career. FRANCIS, *supra* note 84, at 240. In the end, Davis was challenged and did not sit on the panel. *Id.* His career progressed quite well, as he became the first African American general officer in the Air Force in 1954, and he went on to receive a fourth star. Goldstein, *supra*.

⁸⁷ Oral History, *supra* note 1, at 74.

⁸⁸ *Id.* at 68–75.

[W]hen I was about to be shipped out for discharge at Lockburne many of the officers were making a choice of whether they were going to be regular Army. And I had to decide what I wanted to do. And I decided that I didn't want to do that. I decided that I did not want to be a regular JAG officer. I thought of going back home and being a civilian.

Id. at 75.

⁸⁹ *Id.* app. A, at 17. See Appendix (providing an image of McClain during this period).

IV. Post-Army Career

A. The Queen City's Lawyer

McClain returned to the City Solicitor's office in Cincinnati after his discharge, but few expected he would make a career of it and rise through the ranks to lead the office himself. The Solicitor who had hired him told McClain as much from the start; he should not get too comfortable. "John D. Ellis appointed me to the Solicitor's staff of attorneys. He told me I could not do certain things in the office because I was black. I was supposed to get some experience, then be on my way."⁹⁰ McClain began his professional development anew, seizing upon opportunities wherever they presented themselves. "The Solicitor's Office made a lawyer out of me at the expense of the City of Cincinnati. When I needed a deposition, there was no problem about the cost. When I needed an investigator, there was no problem about the cost."⁹¹ He took on the drudgery work that no one else was keen to tackle, looking for moments to excel.

I would wait for the next opportunity to break down a barrier and then do it. While I was waiting, I would study and get ready. I started out doing research for trial lawyers and interviewing witnesses. When you are in an organization, you have to figure out what you have to offer it. As a minority, you have to find that ingredient that the organization needs. That's your ticket for success and promotion. You have to convince a few folks you have the skills that they need so that they can plead your case when an opportunity for you comes along. Those are a few things that I learned in my struggle for success. I'm not worried about race, I'm worried about opportunity.⁹²

Eventually, this effort would pay off, resolving whatever doubts lingered about the talent of the young African American attorney, even as newly hired white assistants would be paid a higher starting salary.⁹³ In the days before computers, while pouring over cases and conducting

⁹⁰ Oral History, *supra* note 1, at 23–24.

⁹¹ *Id.* at 23.

⁹² *Id.* at 25.

⁹³ *Id.* at 128.

research, McClain compiled notes and catalogued and indexed those items that he expected to use at some point. He called the six black notebooks he assembled his “black bibles.” They gave him an authority and credibility that sustained him while working in the Solicitor’s office.

[W]hen I went into court . . . I had to always be prepared to back up from my black Bibles any point I was going to make. Soon it got so that when I ever went before a judge and reached for that black bible after I made my objection, he knew . . . it was in there. . . . And so those black bibles were kept religiously. I put anything of any consequence that was applicable to municipal law and trial work in those bibles. . . . I got a reputation that I was a good lawyer, well schooled and well versed.⁹⁴

It was these bibles, and a case involving a slip and fall on a sidewalk that would eventually cement, as it were, McClain’s skills as a trial lawyer. Leveraging his work on case law to handle motions and briefs, McClain was allowed to sit second chair on *Kimball v. City of Cincinnati*.⁹⁵ Though the city lost at trial, McClain wrote the brief that convinced the appellate court to reverse and he was allowed to act as lead counsel at retrial. Though a loss for McClain, the second verdict amounted to less money for the plaintiff upon retrial than it had been initially. But McClain persevered, reading every case available and appealed to the Supreme Court of Ohio, where he argued without notes. After prevailing there, McClain recalls, “I came back to the city and that cleared up the idea that I couldn’t try jury cases. So that’s how I won my right to be a trial lawyer.”⁹⁶ McClain eventually became the City’s chief trial counsel.⁹⁷

But McClain’s duties and accomplishments at the Solicitor’s office extended beyond the courtroom. His work with the legislation section allowed him to draft ordinances and he became familiar with the work within several other sections⁹⁸ by the time he was appointed Deputy Solicitor in 1957.⁹⁹ His civic contributions extended still further, taking on several cases addressing racial inequality in Cincinnati. He resigned

⁹⁴ *Id.* at 130.

⁹⁵ 116 N.E.2d 708 (Ohio 1953). *See also* Oral History, *supra* note 1, at 125.

⁹⁶ Oral History, *supra* note 1, at 128.

⁹⁷ *Id.* at 125–28.

⁹⁸ *Id.* at 115–18.

⁹⁹ *Id.* app. B, at 2.

from the Cincinnati NAACP, where he had served as President, upon joining the Solicitor's office,¹⁰⁰ but contributed to a string of victories. Having argued and prevailed in cases involving the integration of theaters and hotels before county courts in the 1940s,¹⁰¹ McClain, along with Ted Barry, was part of a 1951 federal court settlement in which the Cincinnati airport agreed in writing to serve all patrons, regardless of color.¹⁰²

While serving a larger cause, McClain was also learning on a basic level about leadership. Though largely an outsider fighting his way in—the only African American in the Solicitor's office from 1946 until 1963¹⁰³—as he moved into supervisory roles he faced adjustments. He began evaluating which attorney was best suited for a particular case and assisting others with their case strategy. Leading was something he simply had to learn how to do. Meanwhile, he developed tools as a deputy, which would allow him to make changes when he took charge.¹⁰⁴

When he became the City Solicitor in 1963, at the age of 50, no other city with a population of over 500,000 had an African American as its chief legal adviser.¹⁰⁵ McClain supervised 22 assistant city solicitors and a total staff of 50. In taking charge, he would draw upon the example of Willis Ward at the University of Michigan and reapply the spirit of reconciliation McClain displayed there with his initial moot court partner and lifelong friend.¹⁰⁶ At the time McClain assumed the Solicitor's

¹⁰⁰ McClain was President of the Cincinnati Branch from 1940 to 1942. See Oral History, *supra* note 1, at 190, app. B, at 8.

¹⁰¹ Oral History, *supra* note 1, at 188–90.

¹⁰² *Airport Diner Opened to All*, AFRO-AM., May 5, 1951, at 3.

¹⁰³ Oral History, *supra* note 1, at 133–34.

¹⁰⁴ *Id.* at 151–52. McClain had a supervisor who, while a genuinely nice individual, was not very communicative. In order to maintain situational awareness, McClain would “come down on Saturdays and go through the out box in the secretarial bay to find out what was happening.” *Id.* Knowing that a Deputy could be called upon to be Acting Solicitor at any time, McClain as Solicitor held regular staff meetings with his Deputy and Chief Counsel, and copied them on key correspondence. *Id.*

¹⁰⁵ *Cincinnati's Legal Head*, EBONY, June 1963, at 87 (quoting Senator McClain).

¹⁰⁶ Oral History, *supra* note 1, at 146. After edging out a colleague for the position of Solicitor, McClain went about winning over those who had opposed him. He approached the head of the secretary pool, offering her increased responsibility and a pay raise, on the condition that she commit to being a loyal team player. The same approach worked to win over his former rival to serve as Deputy Solicitor. This not only rounded out his staff, but compelled his one-time opponent to reverse hateful, racist things said in the run-up to McClain's appointment. McClain went to his competitor for the solicitor's job and offered him the position, provided he would be

office, it was reported that he had “touched all the right bases,” as in, he was “an active Republican in a Republican city.”¹⁰⁷ As it turns out, leaders of Cincinnati institutions of perhaps greater weight than the Republican establishment would weigh in on McClain’s pedigree and selection.¹⁰⁸

loyal to me, straight with me, and run my shop for me when I’m absent. . . . [He] came back within an hour and told me that he could do that. Then he had to go around City Hall and reverse himself with all those people that he had badmouthed me on. And when it was known that I had appointed Wally my deputy city solicitor some folks didn’t believe me because of the way he had badmouthed me. But then I brought him in. [S]ometimes it’s good to turn the cheek because you’re your own worst enemy. [D]on’t burn your bridges behind you—because your worst enemy may walk over that bridge and become your best friend. That’s happened to me in life. So never burn your bridges behind you. Always be willing to turn your cheek.

Id. at 147–48.

¹⁰⁷ *Cincinnati’s Legal Head*, *supra* note 105, at 87. Around this time McClain’s comments on civil rights issues during a speech in Cleveland attracted interest and praise from then–former Vice President, and future President, Richard Nixon. Letter from Richard M. Nixon, to William A. McClain, Solicitor of City of Cincinnati (Dec. 14, 1965) (on file with author) (“There has been too much demagoguery and too little sense in much of the civil rights discussion during recent months and your remarks, therefore, stood out even more because of their constructive clarity and courage.”).

¹⁰⁸

When I was formerly considered for city solicitor I had to go to the President of Proctor and Gamble. . . . Neil McElroy. So I went up one morning in my [O]xford gray suit and cordon shoes and clean shirt and tie. And I called Mr. McElroy one day to sit and have coffee with me. He didn’t ask me any questions. But they wanted to observe what I looked like and acted like as a person. As a minority, could I be city attorney of a major city. Then he wanted me to go see Joseph A. Hall, who was President of the Kroger Company. What he wanted was the main corporate leaders in Cincinnati’s approval of this appointment. So I did the same thing with Joe Hall. They both were in an approving situation. But I had to get that approval. Whether as a black I looked like I could play the part and do the part.

Oral History, *supra* note 1, at 154–55. Proctor and Gamble remains a household name today, but so was Neil McElroy at one time. On the cover of *Time* magazine in October 1953, McElroy was a vanguard in the creation of the soap opera as a marketing tool. *TIME*, Oct. 5, 1953. He appeared on the cover again several years later while serving as Secretary of Defense. *TIME*, Jan. 13, 1958. While with Kroger, Joe Hall brought the

Before long, McClain would show the nation his character and leadership, as Cincinnati was pulled into the turmoil of riots following the assassination of Martin Luther King, Jr. When the City Manager was away, the City Solicitor served as the Acting City Manager,¹⁰⁹ as was the case in April 1968. McClain would be one of the many heads of major American cities to grapple with and speak out on how and when police would respond with lethal force to the sudden rush of violence sweeping the nation.¹¹⁰

But his duties would range well beyond what judge advocates today would term operational law as pertains to the Rules for the Use of Force. A day in the life of the City Solicitor touched a diversity of practice areas that made news, from imposing punishment on police officers as determined by disciplinary proceedings,¹¹¹ recommending an increase in court fees to cover increasing costs for court services, urging the sale of city land for the construction of low cost housing, opposing amnesty on traffic citations, and instituting a newspaper recycling program.¹¹² In one instance, he was able to provide an on-the-spot correction of sorts to a Cincinnati police officer who had racially profiled him.¹¹³

grocery chain “into the modern age—from the corner store to the supermarket.” Oliver M. Gale, *Joe Hall, Urban Visionary*, CINCINNATI, June 1993, at 76.

¹⁰⁹ Oral History, *supra* note 1, at 119.

¹¹⁰ See, e.g., Ron Youngblood, ‘Shoot Order’ Fans National Controversy, CHI. DAILY DEFENDER, Apr. 18, 1968, at 4 (“[N]aturally we will use whatever force is necessary to apprehend criminals during riots. We will, however, always exercise restraint and conform to normal police procedures. Police always have had the right to fire at escaping felons, but not persons committing a misdemeanor.”).

¹¹¹ See, e.g., *McClain Suspends Patrolman*, CINCINNATI POST, Mar. 18, 1972.

¹¹² *Way Seen for City to Take Over CTI*, CINCINNATI POST, Nov. 9, 1971, at 28.

¹¹³

Back when I was the City Solicitor I was going out to my Cadillac to get a car wash. And I happened to be driving at the same speed that the other car was running. And when that car turned off, I hear a siren coming in. . . . [A] police officer pulled me over and stopped me. I asked him politely, [“W]hat did I do, Officer? [”] He said, [“Y]ou were speeding. [”] I said, [“I] couldn’t be speeding. [”] Everybody had passed him by but me and he did nothing. But when I came by in a Cadillac, well dressed, he may have thought that I was a drug racketeer or something. But he stopped me. So I asked him his name and so forth. I told him who I was. Of course, then he was ashamed of himself. I got his badge. I said, [“Y]ou and your supervisor appear in my office tomorrow morning. [”] So he came in and I told him that there was no doubt the fact he stopped me was

B. Taking on and Entering the Establishment

1. Bar Fight

It was again the matter of race that brought McClain into the national spotlight as he fought for several years to join the Cincinnati Bar Association (CBA). Ohio attorneys are subject to discipline before the state bar, with local organizations, such as the CBA, empowered to handle grievances.¹¹⁴ When he applied for membership in 1946, the CBA had no African American members. When his application was first denied, the CBA treasurer resigned his office in protest, stating in a letter to the CBA president:

The action of the Bar Association in refusing to admit William [A]. McClain to membership because he is a Negro is indefensible. . . . We should be the leaders in erasing distinctions of color and religion as a criterion of professional ability. This man whom we have refused to admit is a person of good character and an American citizen, and served his country in the war for three years.¹¹⁵

While 28 white applicants easily became members, a 35% vote against him tanked McClain's first application.¹¹⁶ Soon, proposals emerged to change the admission standards, easing the requirement for an 80% affirmative vote to join. This effort fizzled at first,¹¹⁷ and though McClain was admitted to another professional group, the Cincinnati

because I was a black in a Cadillac. And that wasn't a very good thing.

Oral History, *supra* note 1, at 118–19.

¹¹⁴ See, e.g., SUP. CT. R. FOR THE GOV'T OF THE BAR OF OHIO § 3 (C)(1) Certified Grievance Committees.

¹¹⁵ *Negro Is Rejected by Cincinnati Bar*, N.Y. TIMES, Oct. 31, 1946, at 36. "Many others called Mr. McClain and said they were going to resign as well. But Mr. McClain issued a statement, requesting them not to do so." HERE IN OHIO, July 1947, at 10 (on file with author).

¹¹⁶ *Cincinnati Bar Association Group Moves to Alter Admission and Lift Ban on Negro*, N.Y. TIMES, Nov. 2, 1946, at 10.

¹¹⁷ *Bar Association Rejects Change in Voting Plan*, CINCINNATI TIMES-STAR, Apr. 26, 1947 (revealing that two proposed amendments to change the CBA's constitution's membership provisions failed at the group's annual meeting).

Lawyer's Club,¹¹⁸ his second application to the CBA failed.¹¹⁹ In the end, after a four-year fight, McClain credits one of his sponsors, a Cincinnati attorney and future Supreme Court justice, Potter Stewart, with helping him take his place among the members of the local bar.¹²⁰ McClain's admission to the CBA in October of 1950¹²¹ brought Cincinnati in line with Ohio's other major cities in terms of minority attorney acceptance.¹²²

2. *Benched*

During his time at the Solicitor's Office, McClain became an adjunct professor in and around Cincinnati, primarily teaching municipal law. He began at University of Cincinnati Law School in 1963 and at the nearby Northern Kentucky University's Salmon P. Chase Law School two years later, teaching at both until 1972.¹²³ That same year, he left the Solicitor's office and joined the firm of Keating, Muething & Klekamp, becoming "the first African American to serve in a major law firm in

¹¹⁸ *Negro Attorney Elected Member of Lawyers Club*, CINCINNATI POST, Jan. 16, 1947 (noting that the induction of McClain—the organization's first African American—came after a "stormy session" and that one member "who was outspoken against acceptance of McClain" resigned in protest). McClain also sought membership in other organizations in his campaign to join the CBA. While made an honorary member of the Lucas County Bar Association, the co-located Toledo Bar Association denied him entry, in part to avoid becoming entangled in the affairs of the CBA. *Toledo Bar Refuses Lawyer Denied Cincinnati Membership*, CHI. DEFENDER, Nov. 22, 1947, at 7.

¹¹⁹ *Bar Group Again Refuses Negro*, CINCINNATI POST, Oct. 18, 1947 (reporting a 200 to 121 vote in favor of McClain). McClain remained positive in the face of the ongoing adversity, saying at the time he was, "gratified to know that still a majority of the members are willing to allow any lawyer, regardless of race, color or creed, to be a member. To condemn the entire association in this action would be to condemn the majority as well as the small minority." *Id.*

¹²⁰ Oral History, *supra* note 1, at 132. McClain's co-sponsors, at the time of his final application to the Cincinnati Bar Association, were Paul Steer—the CBA treasurer who had resigned in protest of McClain's denied admission—and Potter Stewart. See Appendix, *infra* (providing a copy of McClain's Sept. 15, 1950, application card).

¹²¹ *Bar Unit Admits Negroes: Cincinnati Association Elects 2 for First Time in Its 78 Years*, N.Y. TIMES, Oct. 25, 1950, at 41.

¹²² *Local Bar Group Only One in Ohio to Ban Negroes—Study Shows Other Associations of Lawyers Raise No Racial Issue*, CINCINNATI POST, Feb. 19, 1948 (cataloguing the acceptance of African Americans in Cincinnati professional groups of doctors and dentists and that the bar associations of Cleveland, Columbus, Dayton, and Akron already had African Americans among their members).

¹²³ Oral History, *supra* note 1, at 118–19.

Cincinnati.”¹²⁴ While there, McClain would handle contracts and real estate matters¹²⁵ before branching out further as general counsel for the Small Business Administration.¹²⁶ When William Keating, who left Keating, Muething & Klekamp to become a member of the House of Representatives, returned from Washington to Cincinnati in 1974, the former judge recommended McClain to fill a vacancy on the Hamilton County Court of Common Pleas, a post no African American had ever held.¹²⁷

It was not difficult to foresee how Keating’s recommendation would be received in the state capital. The Governor of Ohio at the time was a Republican, like McClain; moreover, Governor James Rhodes had graduated from Springfield High School in 1930 along with McClain.¹²⁸ Upon taking the bench in February of 1975, at age 62, McClain said:

There’s no white judge . . . that can understand a black defendant coming before him like I can, and know all the nuances and frustrations that blacks must experience in a white power structure. . . . To be successful in the white power structure, you have to know the survival techniques. . . . And yet I have lived and socialized in the black community, so I know the feeling and aspirations of black people. So, with this mixture, as a judge I feel I can have better insight on trying to give justice to those who come before me.¹²⁹

¹²⁴ Borrer, *supra* note 26, at 28.

¹²⁵ Oral History, *supra* note 1, at 157.

¹²⁶ *Id.* at 164.

¹²⁷ *Id.* at 166. See also William J. Keating Sr., *The Cincinnati Enquirer—Congressman Became Publisher, Chairman*, CINCINNATI ENQUIRER, Sept. 27, 2009, available at <http://news.cincinnati.com/article/20090927/BIZ01/308010025/William-J-Keating-Sr-Cincinnati-Enquirer>.

¹²⁸ Oral History, *supra* note 1, at 98. See also David Shutt, *James A. Rhodes, 4-Term Governor, Dies*, TOLEDO BLADE, Mar. 5, 2001, available at <http://www.toledoblade.com/State/2001/03/05/James-A-Rhodes-4-term-governor-dies.html>. Rhodes may be most widely remembered for his decision amid anti-war demonstrations in 1970 to order Ohio National Guard troops onto the Kent State University campus. The troops opened fire, killing four students. See John Kifner, *4 Kent State Students Killed by Troops*, N.Y. TIMES, May 5, 1970, at A1.

¹²⁹ Bill Furlow, *For Judge McClain, It’s Not His First First*, CINCINNATI POST, Feb. 25, 1975. In his brief stint on the bench, McClain had at least one opportunity to live up to this ideal. McClain granted so-called “shock probation” to a sixty-one-year-old real estate agent who had embezzled “\$70,000 from the New Orphan Asylum for Colored Children of Cincinnati.” *Embezzler Put on Probation*, CINCINNATI POST, Nov. 13, 1975.

After filling out the unexpired term to which he had been appointed, McClain faced a bitter re-election contest in 1976 and lost to a white judge who sat in a lower, municipal court.¹³⁰ The loss was frustrating for several reasons. Besides an inconsistent result in the polls—winning the popular vote within the City of Cincinnati, but not in the surrounding county—McClain felt for the first time that he lost a challenge due to his race.¹³¹ McClain would not be done with his time serving the courts, though, and would go on to serve as municipal court judge and then trial referee in Hamilton County from 1977 until 1980.¹³²

C. Post Judgeship Career and Legacy

Starting in 1980, McClain returned to the field of municipal law with the firm of Manley Burke, where he would practice for another two decades.¹³³ While there, he also served as Law Director for the village of Lincoln Heights, north of downtown Cincinnati, and continued to practice into his nineties.¹³⁴ Other than giving up driving, he did not slow down a great deal.¹³⁵ He was active in the Masons and the Sigma Pi Phi Fraternity for many years,¹³⁶ received numerous civic honors,¹³⁷ and worked to mentor and expand opportunities for other attorneys.¹³⁸

The defendant's conditions of probation required him to make restitution to the satisfaction of the orphanage trustees; he agreed to do so by surrendering five deeds to properties he owned and by making monthly payments to the orphanage. *Id.*

¹³⁰ Oral History, *supra* note 1, at 166. See also Horstman, *supra* note 6, at C5.

¹³¹ Borrer, *supra* note 26, at 8. See also Oral History, *supra* note 1, at 177–78.

¹³² Borrer, *supra* note 2618, at 8. See also Oral History, *supra* note 1, app. B at 3.

¹³³ Oral History, *supra* note 1, at 184–85.

¹³⁴ Horstman, *supra* note 6, at C5.

¹³⁵ Oral History, *supra* note 1, at 104.

¹³⁶ *Id.* at 102–04, 193–99.

¹³⁷ McClain's numerous honors include

the 2010 Fifth Third Bank Profiles in Courage Award and the Greater Cincinnati Chamber of Commerce's 2003 Great Living Cincinnati Award. . . . He has also received honorary diplomas from the University of Michigan, Wittenberg University, the University of Cincinnati . . . and Wilberforce University. His church, Allen Temple A.M.E., dedicated a fountain in his honor in 2003.

Kemble Borths, *supra* note 42. Among his other recognitions are “the 1999 CBA Trustees' Award, the 1997 Ellis Island Gold Medal of Honor, the 1997 Race Relations Award from the Ohio Dr. Martin Luther King Jr. Holiday Commission and membership in the National Bar Association Hall of Fame.” Borrer, *supra* note 26, at 29.

¹³⁸ One area of focus for McClain was minority and female lawyers. Oral History,

McClain had several scholarships established in his honor, which primarily benefit African American students.¹³⁹

V. Conclusion

McClain's satisfaction about the breaking of boundaries peaked the day Barack Obama was elected President, as one of McClain's law partners later recalled. The partner, a prominent Democrat, related that McClain, "called me up to his office and said, 'I never thought I'd live to see the day.' And this coming from a Republican!"¹⁴⁰ Having lived to see many such days, for McClain there was little mystery as to how anyone can surmount any challenge. Looking back on his long life of accomplishments, he explained with both determination and modesty how he had done it.

So, I think for a poor boy in Springfield, Ohio, the Lord's been good to me. I've been able to prove that there's really no excuse in life such as poverty, racism, classism, or any other kind of negative circumstances that prevents you from achieving your selfhood. And that's the main goal in life is obtaining your selfhood no

supra note 1, at 134. While City Solicitor, McClain hired a young female attorney unable to obtain a position with the corporate firms in Cincinnati because of her gender. She became Cincinnati's first female Solicitor. *Id.* at 158. He also served as a mentor for Sharon Zealey, who worked with him at Manley, Burke. *Id.* at 134. She would go on to become the first woman and the first African American to serve as U.S. Attorney for the Southern District of Ohio. Connie A. Higgins, *U.S. Attorney Credits Strong Role Models, Hard Work For Success*, COLUMBUS DISPATCH, Jan. 27, 1999, at 3D (quoting Zealey, who named McClain, among others, as a mentor without whom she would not have succeeded).

¹³⁹ Oral History, *supra* note 1, at 200–01. The William A. McClain Scholarship was initiated by a donation from McClain's former firm, Keating, Muething & Klekamp, and is administered by the Black Lawyers Association of Cincinnati. It is typically "awarded to a Black law student attending any accredited law school who has demonstrated leadership potential, . . . a dedication to the Cincinnati community, and has expressed a financial need." Black Lawyers Association of Cincinnati Scholarship Information (Mar. 28, 2013), <http://cincyblac.org/Scholarship.lasso>. The Honorable William A. McClain Scholarship was started by Cincinnati businessman Carl Lindner in 1996 at Wittenberg University, and each year benefits an African American student from the greater Cincinnati area. Wittenberg University, Office of Financial Aid—Endowed Scholarships (Mar. 28, 2013), http://www5.wittenberg.edu/administration/financial_aid/endow.html.

¹⁴⁰ Horstman, *supra* note 6, at C5. On the occasion of his 100th birthday several years later, McClain was excited at the prospect of a congratulatory telephone call from the President. *Id.*

matter who you are. That's been my goal. I had some things to overcome, and I just worked hard and overcame them.¹⁴¹

William McClain's recent death was the frequent subject of honorary gatherings and news reports.¹⁴² His vast collection of personal papers is maintained by the Cincinnati Museum Center, part of Union Terminal, where as a recent law school graduate new to Cincinnati he could not hail a taxi.

¹⁴¹ Oral History, *supra* note 1, at 94.

¹⁴² See Appendix (providing a recent photo of McClain).

Appendix

Photo courtesy of The Cincinnati Post
**William A. McClain — Assistant
City Solicitor, Cincinnati: “— Legis-
lation Must Not Get Too Far Ahead
of Education.”**

Photo appeared in *HERE IN OHIO*, July 1947 at 10 (on file with author) and is reprinted with the permission of Scripps Media, Inc.

Cincinnati, Ohio, September 15, 1950

The Cincinnati Bar Association
Cincinnati, Ohio

Gentlemen: I hereby make application for membership in the Cincinnati Bar Association and attach check covering initiation fee and first year's dues.

Date Applicant
Admitted to Ohio Bar: 11 2 1938 William A. McClain
Day Mo. Yr. APPLICANT

Office Address: 509 Central Ave. & Room 214 City Hall

Res. Address: 3005 Walter - Apartment 203

Telephone No.: Op 2121-22 & GA 5700 - Line 337
PL 5250

We, the undersigned, hereby recommend the above Applicant for membership in the Cincinnati Bar Association.

Aul Wheeler Potts Stewart
MEMBER MEMBER

(Over)

Image provided to author through the generosity of the Cincinnati Bar Association.



Photo originally appeared in Horstman, *supra* note 130, at C1 available at <http://news.cincinnati.com/article/20130109/NEWS01/301090145/At-100-McClain-looks-back-legacy-firsts> and is used with permission from The *Cincinnati Enquirer*/Joseph Fuqua II.