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Lecture

In the Shadow of *Plessy*: A Portrait of McCants Stewart, Afro-American Legal Pioneer*

J. Clay Smith, Jr.**

This Lecture considers the career of McCants Stewart, one of the first Afro-American graduates of the University of Minnesota Law School, and the first Afro-American to be admitted to the bar and to practice law in the state of Oregon. Stewart was a determined and courageous lawyer in the northwestern part of the United States from the turn of the century until his death in 1919. His life and deeds reflect an unyielding commitment to the principle of justice for all powerless people in the northwest, including Afro-Americans, whites, and Asians.

Achievement marked the life of McCants Stewart, despite the racial repression of the time in which he lived. Born at the end of the Reconstruction period,¹ and graduated from Alabama's Tuskegee Institute² the same year in which the United

* This lecture was presented on April 14, 1988, on the occasion of the inauguration of the Mary [and] McCants Stewart Foundation scholarship at the University of Minnesota Law School.

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1. Contemporaries applied the term *Reconstruction* to the period following the Civil War. As they used it, the term had a strictly political connotation.

It referred to the process by which the defeated states of the late Confederacy would be governed and to the conditions on which they would be restored to their former place in the Union. Historians have adopted the term and applied it to all the great transforming changes that occurred in the entire nation between 1865 and 1877, the year when Southern whites overthrew the last Republican state governments in their section and ended political Reconstruction.

T. WILLIAMS, R. CURRENT & F. FREIDEL, *A HISTORY OF THE UNITED STATES SINCE 1865*, at 7 (3d ed. 1969). *But see* W. DUBOIS, *BLACK RECONSTRUCTION IN AMERICA 1860-1880*, at 670-708 (1935) (presenting contrasting view of Reconstruction).

2. Since Stewart's attendance, Tuskegee Institute has been renamed Tuskegee University. Founded in 1881, the school is located in Tuskegee, Alabama.

States Supreme Court decided *Plessy v. Ferguson*³ and William McKinley took office,⁴ McCants Stewart lived in a United States constrained by the "separate but equal" doctrine⁵ and its brutal political and social ramifications.

Despite the ominous shadow of segregation, Stewart refused to sacrifice his principles at the expense of his clients or to derogate his beliefs. The accomplishments of his relatively short life seem remarkable considering the obstacles against which he struggled. For his commitment to equal justice and his unrestrained advocacy on behalf of the unempowered, McCants Stewart deserves an honored place in the history of United States law. As one of the earliest Afro-American private practitioners, his legal acumen commanded respect in courtrooms throughout the Pacific northwest.

I. DAYS AT TUSKEGEE INSTITUTE

On July 11, 1877, in Brooklyn, New York,⁶ McCants Stewart was born to Charlotte Harris Stewart and T. McCants Stewart, an attorney who had been admitted to the South Carolina bar two years earlier.⁷ The younger McCants Stewart eventu-

3. 163 U.S. 537 (1896) (upholding as constitutional "separate but equal" accommodations for colored people).

4. William McKinley defeated William Jennings Bryan in the election of 1896. Afro-Americans later applauded McKinley's victory when he "appointed twice as many Negroes to federal positions as any previous President." J. FRANKLIN, *FROM SLAVERY TO FREEDOM* 434 (1967). During the course of the Spanish-American War—one of the most important events in his presidency—McKinley praised Afro-American soldiers for their bravery and loyalty to the nation. *SPEECHES AND ADDRESSES OF WILLIAM MCKINLEY, FROM MARCH 1, 1897 TO MAY 30, 1900*, at 126-27 (1900) (speech delivered at Springfield, Ill., Oct. 15, 1898); *id.* at 176-77 (speech delivered at Georgia Agricultural and Mechanical College, Dec. 18, 1898); *id.* at 241 (speech delivered at Quinn Chapel, Chicago, Ill., Oct. 8, 1899). Hence, McCants Stewart left college during a time when the President informed the American people that Afro-American soldiers had played a large role in the Spanish-American War.

5. See *Plessy*, 163 U.S. at 532 (Harlan, J., dissenting). The shadow of *Dred Scott* continued to darken United States law. In that case Chief Justice Roger B. Taney had stated that blacks "had no rights which the white man was bound to respect." *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 407 (1857); see also Smith, *Toward a Pure Legal Existence: Blacks and the Constitution*, 30 HOW. L.J. 921, 929-30 (1987) (discussing *Dred Scott* decision).

6. Telephone interview with Mary Katherine Stewart-Flippin (wife of Robert B. Flippin), McCants Stewart's only child (Dec. 3, 1987).

7. *DICTIONARY OF AMERICAN NEGRO BIOGRAPHY* 571-72 (1982) [hereinafter *DICTIONARY*]. Stewart's father used the name T. McCants Stewart professionally. "T" stood for Thomas.

McCants Stewart's name appears as Thomas McCants Stewart, Jr. in various Tuskegee Institute catalogues, suggesting that he shared the name of his

ally attended Tuskegee Institute under the leadership of its founder, Booker T. Washington.

Stewart's correspondence with Washington and his wife, Margaret James Washington, reveals much about his student life. In one letter, Booker T. Washington scolded Stewart for eating between meals, a practice strictly forbidden at the Institute. Apparently a small-framed lad, Stewart preferred to eat at odd times, but Washington remained adamant. In a May 10, 1894, letter to Stewart, Washington wrote:

In connection with Dr. Johnson, I have fully considered your request regarding food. She says that the main trouble with you is that you do not obey her orders; that you eat between meals, when if you would confine yourself to the dining room diet, you would very soon grow alright. I see no reason why you should be treated in this respect, different from the other students, and I do not see anything further that I can do in regard to the matter. I have fully considered everything, and am decided that there is nothing else to be done at present.⁸

In July, 1894, the Council of Tuskegee Institute voted to expel Stewart after he again violated a rule. Stewart apparently appealed to Washington in a letter that did not set well with him. Washington replied:

Dear Stewart:—

I have received your letter and have carefully considered it. I am sorry that you have acted in the way that you have. Even if I had no other evidence than your own statement, and the temper you manifest throughout your letter, I would decide that the Council was perfectly and thoroughly justifiable in taking the action it did in regard to your case.

The trouble with you is, and it is a trouble that is going to cause you to regret this propensity in after life, that you are determined to have your own way in regard to everything that does not go to suit you. I had hoped that after your promise to me that you were going to control yourself, at least for the Summer, that you would do so and try to make a man of yourself, but I am sorely disappointed.

In after years, I think you will find that you have made a *serious* mistake. When I am absent from the school, I never attempt to interfere, in any way, with the decisions of the Council or those in charge.

I shall write your father to-day, and ask him to take whatever steps for your future he thinks best.⁹

famous father. See, e.g., 1896-1897 TUSKEGEE NORMAL AND INDUSTRIAL INSTITUTE CATALOGUE 23. Stewart's daughter, Mary Katherine Stewart-Flippin, maintains that his name was simply McCants Stewart. Telephone interview with Mary Katherine Stewart-Flippin (Mar. 23, 1988).

8. Letter from Booker T. Washington to McCants Stewart (May 10, 1894).

9. Letter from Booker T. Washington to McCants Stewart (July 14, 1894) (emphasis in original).

Stewart later pleaded his case for readmission to Tuskegee Institute to Margaret James Washington and his plea eventually reached her husband in New York. Washington wrote Stewart the following letter:

Dear Mac:—

Mrs. Washington wrote me a few days ago that she was going to write you. I do not know whether or not she has done so. If you now think that you are in a state of mind that will permit you to obey the rules of the school, and be governed by what we think will be best for you, I think I shall ask the Council as soon as I return to permit you to re-enter the school, but I wish to know what your intentions are in regard to obedience before making an application of this kind . . .¹⁰

By the end of October, 1894, the Council had voted, probably with Booker T. Washington's endorsement, to readmit Stewart to Tuskegee Institute. Stewart received the following letter from Washington:

Dear Stewart:—

Your case has been put before the Council, and it has been decided to allow you to return to school January 1st. This being true, I think it will be well for you to ask Mr. Roy to let you come down to the school, and we will see if you can be helped in the matter of getting what clothing you may need for the Winter. I wish you would come at once as I shall be going away soon . . .¹¹

Margaret James Washington's intervention on behalf of McCants Stewart was by no means unusual. She frequently concerned herself with Institute students, often serving as a buffer between them, Mr. Washington, and the Council. Her relationship with McCants Stewart was much like that between a mother and son. The warmth of this relationship is reflected in a July, 1895, letter from her to Stewart:

Dear Mack:—

You can not [sic] know how glad I am to get your letter[.] It was sent to me this morning from Aberdeen Miss. It has been a long time on the road but I am just as glad to get it. I know that it was hard for you to give Chris. up but I hope that you will be sure to write to him every week for if you do not you will be sure to grow apart and this I hope will never be. I am now here with Mr. Washington who seems to need me more than any body [sic] else just now. I do hope that you are going to come out alright at the close of the summer. Mr. Callo-way is not a strict man but you must not take advantage of this goodness[.] I[t] is often best to be strict with boys of your age but I suppose you think that I ought now to say young men of age. I shall be in Tuskegee before very long. I am very tired[.] I can not tell what hsa [sic] made me so but I am. Be sure to look out for Mack. I am writing on the Type this summer and I hope to some day get a posi-

10. Letter from Booker T. Washington to McCants Stewart (Oct. 11, 1894).

11. Letter from Booker T. Washington to McCants Stewart (Oct. 31, 1894).

tion at the school.¹²

During Stewart's ensuing student days, he enrolled in Tuskegee Institute's Music School, specializing in piano and voice.¹³ His main interest, however, was debate,¹⁴ and he developed considerable skill in this academic area. For example, Stewart and his partner, E.D. Whitehead, argued the merits of the resolve "that men of thought have done more for the world than men of action" against J.A. Lankford and John W. Robinson; Stewart and Whitehead, for the affirmative position, prevailed over Lankford and Robinson, who argued the negative. *The Tuskegee Student* singled out Stewart's argument for praise, stating that "from the very beginning, it electrified the whole audience."¹⁵

McCants Stewart graduated from Tuskegee Institute in 1896.¹⁶ Updating the whereabouts and the progress of its graduates later that year, *The Tuskegee Student* reported that McCants Stewart was "in his father's law office at his home in [Brooklyn,] N.Y."¹⁷ and had enrolled at the New York University Law School. Stewart was quoted as saying "the trouble of the whole thing is, it takes education of the head—no hand and heart in it."¹⁸ This statement might have been a veiled criticism of Tuskegee Institute's emphasis on industrial training.

12. Letter from Margaret James Washington to McCants Stewart (July 20, 1895). The "Chris" Mrs. Washington referred to was Gilchrist Stewart, McCants Stewart's older brother. He had graduated from Tuskegee Institute in June of the same year.

McCants Stewart remembered Booker T. Washington and his wife in later years and remained in communication with them. See Letter from Margaret James Washington to McCants Stewart (Dec. 14, 1910) (responding to letter from Stewart); Letter from Booker T. Washington to McCants Stewart (Dec. 22, 1910) (responding to Stewart's request that Washington write introduction to one of Stewart's books). Booker T. Washington died in 1915. His death was exceedingly painful for Stewart, who considered Washington a role model. When Washington died, Stewart joined in the national mourning and delivered a eulogy for Washington in Oregon. *Colored People Honor Booker T. Washington*, *Advocate*, Dec. 4, 1915.

13. 1895-1896 TUSKEGEE NORMAL AND INDUSTRIAL INSTITUTE CATALOGUE 35, 36.

14. See *Tuskegee Student*, Apr. 1895 (discussing Stewart's debate prowess).

15. *Tuskegee Student*, Apr. 1895.

16. 1896-1897 TUSKEGEE NORMAL AND INDUSTRIAL INSTITUTE CATALOGUE 23.

17. *Tuskegee Student*, [exact date unknown] 1897 (photocopy on file at *Minnesota Law Review* offices).

18. *Id.*

Nevertheless, *The Tuskegee Student* predicted that "despite this fact [McCants Stewart] will succeed."¹⁹

II. DAYS AT THE UNIVERSITY OF MINNESOTA LAW SCHOOL

Although this Lecture focuses primarily on McCants Stewart's contributions, it necessarily must touch upon the lives of two other Afro-Americans who first integrated the University of Minnesota and its law school. Andrew Franklin Hilyer graduated from the College of Science, Literature and the Arts in 1882.²⁰ John Frank Wheaton, who had studied law at Howard University, completed his degree at the University of Minnesota Law School in 1894.²¹ Wheaton,²² the first Afro-American

19. *Id.*

20. THE GENERAL ALUMNI CATALOGUE OF THE UNIVERSITY OF MINNESOTA 26 (W. Maxwell ed. 1916); *see also* E. SPANGLER, THE NEGRO IN MINNESOTA 76 (1961) (stating erroneously that Hilyer graduated from University of Minnesota in 1887). Born near Monroe, Walton County, Georgia, on August 14, 1858, Andrew Franklin Hilyer lived for a time in Omaha, Nebraska, before moving to Minneapolis, Minnesota. He graduated from Minneapolis High School in 1878 before enrolling in the College of Science, Literature and the Arts. Hilyer later attended the Howard University School of Law, receiving an LL.B. degree in 1884, and an LL.M. in 1885. R. LOGAN, HOWARD UNIVERSITY—THE FIRST HUNDRED YEARS 96 (1969).

Hilyer applied his law training in business. In 1890, Hilyer received patents for two inventions: No. 435,095, for the Water Evaporator Attachment for Hot Air Register (Aug. 26, 1890) and No. 438,159, for the Registers (Oct. 14, 1890). *See* THE NEGRO ALMANAC 1071 (4th ed. 1983) (listing inventions).

For additional information on Hilyer, *see* DICTIONARY, *supra* note 7, at 315 (reporting that University of Minnesota's Office of Admissions did "not respond to the question of whether [Hilyer] was the first Negro graduate of the University in correspondence"); FORTY YEARS OF THE UNIVERSITY OF MINNESOTA 486, 569 (E. Johnson ed. 1910) [hereinafter FORTY YEARS] (listing Hilyer as graduate in 1882); *Editorial—Andrew F. Hilyer*, 19 Howard University Record 170 (1925) (citing obituary noting that Hilyer was "first colored alumnus" of University of Minnesota); Memorandum from Lisbeth Williams, Minnesota Historical Society, to Director of University Relations, Howard University (May 26, 1983) (stating that "Mr. Hilyer . . . played an important role in Minnesota history, as the first Black graduate of the University of Minnesota").

21. ALUMNI DIRECTORY OF THE UNIVERSITY OF MINNESOTA LAW SCHOOL, 1889-1931, at 100 (1932); FORTY YEARS, *supra* note 20, at 528, 584; *see also* E. SPANGLER, *supra* note 20, at 69 (noting Wheaton was first black law graduate from University of Minnesota). Wheaton (sometimes listed as J. Francis Wheaton) was born in Hagerstown, Maryland, in 1866 and attended Storer College in West Virginia before studying law at Howard University and graduating from the University of Minnesota Law School. Wheaton went on to become the first Afro-American elected to the Minnesota State Legislature, and served from 1898-1900. MINNESOTA LEGISLATIVE MANUAL 627 (G. Hallberg ed. 1899); Telephone interview with Daniel Gjeten, Reference Librarian, Minnesota State Legislature (Mar. 23, 1988).

law school graduate, and Hilyer, the first Afro-American lower division graduate, set the stage for McCants Stewart and other Afro-American students at the University of Minnesota.

Although McCants Stewart had entered New York University Law School in the fall of 1896, he remained for only one year. The following year, Stewart transferred to the University of Minnesota Law School, then under the leadership of its first dean, William S. Pattee. The reason for his transfer remains a mystery. Stewart may have been motivated by his father's decision to leave New York and to practice law in Honolulu, Hawaii,²³ or by his desire to join his classmate and good friend, Jay Moses Griffin, who had been admitted to Minnesota after graduating from Tuskegee in 1896.²⁴ Griffin appears to have been the second Afro-American student admitted to the law school, followed by Stewart in 1897, and Joseph C. Reid in 1898.²⁵ Thus, two Tuskegee Institute graduates from the class of 1896 helped to integrate the University of Minnesota Law School. Had illness not required Griffin to withdraw from the school during his senior year,²⁶ he would have shared Stewart's distinction as the second Afro-American law graduate. In any case, Griffin later returned to the law school and received his

22. One University of Minnesota source states that McCants Stewart "was the first colored person to finish any post graduate course in the history of the University of Minnesota." FORTY YEARS, *supra* note 20, at 422. This statement contradicts information on John Frank Wheaton within the same volume, however. *See id.* at 528, 584.

23. *See Mr. McCants Stewart*, *Minnesota Daily*, July 27, 1900.

24. *See* 1896-1897 TUSKEGEE NORMAL AND INDUSTRIAL INSTITUTE CATALOGUE 22-23.

25. *See* ALUMNI DIRECTORY OF THE UNIVERSITY OF MINNESOTA LAW SCHOOL, 1889-1986, at 89-90, 447 (9th ed. 1986) [hereinafter 1986 ALUMNI DIRECTORY] (stating that Stewart graduated in 1899 and Reid in 1900). Stewart probably completed one year of law school at New York University Law School; he finished the University of Minnesota's three-year program in only two years. Stewart enrolled in the day program, although the law school also maintained an evening program. *See* FORTY YEARS, *supra* note 20, at 422 (referring to Stewart as being "secretary of the day law class of 1899"); *see also* Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part I: The Pattee Years—A Time of Accommodation*, 62 MINN. L. REV. 485, 505 (1978) [hereinafter Stein, *Part I*] (noting adoption of more rigorous three-year day program); Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part II: The Vance Years—A Time of Ascendancy*, 62 MINN. L. REV. 857, 862 (1978) (discussing day and night programs).

26. *See* Afro-American Advance, June 24, 1899 (describing fund-raising event organized by and held at St. Peter's A.M.E. Church to aid Mr. Griffin, with planning and participation by Joseph C. Reid and McCants Stewart and a dramatic performance by Mary Delia Weir, Stewart's future wife).

law degree in 1900.²⁷

Stewart was an active law student. He participated in the Kent Debate Society, one of several such societies.²⁸ One of the group's most competitive rivals was the Minerva Debating Society, composed of women law students.²⁹ McCants Stewart earned the respect of his classmates, who elected him secretary of the senior class³⁰ and Sheriff of the Moot Court. As Sheriff, he officiated during all Moot Court sessions at the law school.³¹ In their senior year, Jay Moses Griffin recruited Stewart to serve as business manager and associate editor for the *Twin-City American*, a black newspaper.³²

During his tenure at the law school, McCants Stewart challenged the discrimination he suffered when a Central Avenue restaurant refused to serve him a meal. The restaurant's owner, John Flangstad, had told Stewart that he employed "such as you to clean my back yard."³³ Several patrons observed the incident and left their names with Stewart, who filed an administrative complaint with the Minneapolis City Attorney's Office under an 1897 state civil rights law. After an investigation, Assistant City Attorney Dickinson filed a lawsuit against Flangstad,³⁴ charging him with violating Stewart's civil rights. At trial, Flangstad claimed that his business suffered when he served "colored people." The local press reported that Flangstad's restaurant "used to feed colored men. . . . [b]ut when the colored people commenced to come in large numbers, his white customers dropped off, and then when he made objection to the colored men, they also quit, and he was left without any patronage."³⁵ A jury of twelve Minneapolis citizens convicted Flangstad of violating Stewart's civil rights.³⁶

27. See 1986 ALUMNI DIRECTORY, *supra* note 25, at 90, 435.

28. *Kent wins*, *Ariel*, Apr. 22, 1899.

29. *Id.*; see also Stein, *Part I*, *supra* note 25, at 488-89 & n.18 (discussing paucity of women in law school).

30. See *Mr. McCants Stewart*, *Minnesota Daily*, July 27, 1900.

31. *The Ariel*, Feb. 18, 1899.

32. The *Twin-City American* was published at 200 Washington Ave. S., Minneapolis., Minnesota. *Another Paper in Sight*, *Minneapolis Tribune*, May, 1899; see also E. SPANGLER, *supra* note 21, at 75 (noting existence of *Twin-City American*).

33. *A La Lake City In A Restaurant*, *Minneapolis Journal*, Mar. 1898.

34. *Civil Rights Law*, *Minneapolis Tribune*, Mar. 18, 1898 (stating that Stewart's complaint triggered first prosecution under civil rights statute passed previous year).

35. *Guilty*, *Minneapolis Tribune*, Mar. 19, 1898.

36. *Id.* At the time of the verdict, approximately 5,000 Afro-Americans lived in the state of Minnesota. E. SPANGLER, *supra* note 20, at 64.

McCants Stewart was not totally isolated as an Afro-American in the Minnesota legal community. At least three lawyers of Afro-American descent practiced in St. Paul or Minneapolis during Stewart's law school tenure. These early Afro-American practitioners, Frederick L. McGhee, John Frank Wheaton, and William Richard Morris, were all exceptional and respected members of the Minnesota bar. No doubt each knew or knew of Stewart's father, T. McCants Stewart, who enjoyed a national reputation.³⁷

On June 2, 1899, McCants Stewart became the second Afro-American graduate of the University of Minnesota Law School, which had been established in 1888.³⁸ Stewart thus became the third Afro-American to receive a degree from the University of Minnesota, which had been chartered in 1851.³⁹ Few members of his own race witnessed Stewart's historic graduation from the law school, however. The poor attendance prompted the *Colored Citizen* to chide Afro-Americans to "look forward to the power of higher education that the race might stand equal with other races in social environments."⁴⁰ The article continued:

Our failure to attend the commencement at our own state university has proved the conceptive opinion of the white American to be correct. The negro who is looking forward to self-aggrandizement for the purpose of personal gain cannot appreciate people who struggle for higher education. Not until the formidable foe of human obstacles have [sic] been conquered by the toiling student, will encouragement come from his own. But to encourage higher education among our own, when the value is of any importance, it must be done in the very inception of the student's inclination, to cultivate the highest talents predominant in the human mind.⁴¹

The Minnesota Supreme Court admitted Stewart to the state bar on June 2, 1899, and he practiced law in Minneapolis from 1899 to 1901. Stewart likely continued to work as an agent for the *Twin-City American*, an Afro-American newspaper, to finance an LL.M. degree that he earned from the University of Minnesota Law School in 1901.⁴² Stewart also

37. See W.J. SIMMONS, MEN OF MARK 1052 (1887).

38. Stein, *Part I*, *supra* note 25, at 485.

39. *Id.*

40. *The Negro and Higher Education*, *Colored Citizen*, June 10, 1899.

41. *Id.*

42. Telephone interview with Vanne O. Hayes, Assistant Dean, University of Minnesota Law School (Mar. 2, 1988); see also FORTY YEARS, *supra* note 20, at 552 (listing Stewart as 1901 recipient of LL.M. degree).

courted his future wife, Mary Delia Weir, while she attended the University of Minnesota between 1899 and 1901.

McCants Stewart actively participated in Minneapolis's Afro-American community until 1903. In 1901, Stewart debated at the Bethesda Baptist Church in Minneapolis on the question whether "the industrial and social independence of the American negro can be best maintained by establishing a negro commonwealth within the bounds of the United States."⁴³ J.S. Wright, a graduate of Eckstein-Norton University of Kentucky, and Harvey Burke, a graduate of Wilberforce University, argued for the affirmative position. Stewart and Joseph C. Reid, both recent graduates of the law school, argued for the negative. Afro-American attorney William Richard Morris was among the three judges. The judges ruled for the affirmative, but the audience "dissent[ed], thereby causing the judges to explain that they were deciding on the merits of the debate, not on the right or wrong of the question."⁴⁴

III. DAYS OF PRACTICE IN PORTLAND, OREGON

McCants Stewart, now about twenty-five years old, arrived in Portland, Oregon, and applied for admission to the bar in 1903. Stewart's motive for relocating to Portland is not known. *The Oregon Daily Journal*, apparently unaware that Stewart was the second Afro-American graduate of the University of Minnesota Law School, commented: "Stewart is the only colored law graduate of the University of Minnesota. . . . There has never been a colored man admitted in [Oregon], although one application was made a few years ago."⁴⁵ The Supreme Court of Oregon admitted Stewart to the state bar on March 1, 1904.⁴⁶

Stewart apparently was admitted to practice before local courts in Portland before being admitted to the Oregon Supreme Court. Stewart, acting by appointment of the court, represented Charles Shanley in a larceny case in 1903. Apparently having little hope of acquittal on the merits, Stewart ar-

43. *Race Problem Debated*, *Minneapolis Journal*, Apr. 9, 1901.

44. *Id.*

45. *Colored Attorney May Practice Here*, *Oregon Daily Journal*, May 22, 1903. Only one other Afro-American lawyer is known to have visited Oregon before Stewart: Robert Charles O'Hara Benjamin, who practiced law in San Francisco, spoke at the A.M.E. Zion Church in Portland. *DICTIONARY*, *supra* note 7, at 39, 40.

46. Supreme Court Clerk J.C. Moreland admitted Stewart to the Oregon bar, and Stewart opened an office at 106-1/2 Third Street in Portland.

gued that his client's unemployment had affected his life and judgment, and asked the court's mercy. The court convicted Shanley and sentenced him to nine months' work on "the rockpile."⁴⁷

Stewart also represented Japanese clients. In 1903, he defended W. Irvine, who was charged with larceny. Although Irvine's case was hopeless, Stewart waged a spirited defense.⁴⁸ In 1904, Stewart represented Viola Reese, who had been charged with assault with a dangerous weapon. Her alleged victim claimed that Reese "tried to cut her heart out with a pocketknife because she 'cussed' her for making free with a man and a bucket of beer."⁴⁹ The court ignored Stewart's pretrial efforts to subpoena the physician of the alleged victim. At trial, Stewart renewed his request. The sheriff testified that papers had been served on the doctor at the insistence of the prosecuting attorney and, finally, the court ordered the doctor to appear. The doctor testified that the alleged victim had suffered no injury and Stewart's client was acquitted.⁵⁰

In August, 1905, Stewart returned to Minnesota to wed Mary Delia Weir.⁵¹ On his return to Oregon, Stewart prepared his appeal in an embezzlement case that was to be the first case argued before the Oregon Supreme Court by an Afro-American lawyer. In *State v. Browning*,⁵² Stewart challenged the Portland Municipal Police Court's jurisdiction over a matter of state law. The Oregon Supreme Court ultimately rejected Stewart's theory, but not without some difficulty. Although Stewart's artful advocacy had failed, he drew the attention of white people in Oregon who noticed that an Afro-American lawyer had arrived, fully prepared to do battle.

The intolerant racial climate in Portland brought Stewart back before the Oregon Supreme Court in 1906. Oliver Taylor,

47. *Must Labor Now*, Morning Oregonian, Sept. 11, 1903; E. MCLAGAN, A PECULIAR PARADISE, A HISTORY OF BLACKS IN OREGON, 1788-1940, at 115 (1982).

48. *See Quibble Fails To Win*, Morning Oregonian, May 16, 1903.

49. *On Trial For Assault*, Evening Telegram, Oct. 17, 1904.

50. *Id.*

51. Mary, daughter of Victoria Weir, lived at 2105 13th Ave. S., Minneapolis, Minnesota, and married McCants Stewart at All Souls Church in Minneapolis on August 22, 1905. For details regarding the marriage ceremony, see *Stewart-Weir*, Minneapolis Tribune, Aug. 23, 1905; Minneapolis Times, Aug. 23, 1905; and Minnesota Alumni Weekly, Sept. 18, 1905. The couple left for Portland on October 1, 1905, and Mary bore their only child, Mary Katherine, in 1906.

52. 47 Or. 470, 82 P. 955 (1905).

an Afro-American, had purchased a general admission ticket to a vaudeville show at Portland's Star Theater in August, 1904. When Taylor attempted to sit on the main floor, however, theater employees informed him that he would have to sit in the balcony. Taylor sued the owner of the theater, alleging a violation of his civil rights and, among other claims, breach of contract. The trial judge dismissed Taylor's claim as groundless. Stewart appealed the case to the Oregon Supreme Court and obtained a reversal.⁵³

In 1907, the case of G.L. Joell made headlines in Portland and brought McCants Stewart into the limelight again. Edna Hauz, a white woman, alleged that Joell, an Afro-American, had propositioned her on the streets of Portland. Hauz first refused to cooperate with the police,⁵⁴ but later accused Joell of defamation. Joell retained Stewart to defend him. When Hauz left Portland before the hearing took place, white newspapers suggested that Stewart had caused her departure,⁵⁵ and called Joell a "coon"⁵⁶ and a "babboon."⁵⁷ [sic] At trial, the court refused to admit evidence that Stewart offered regarding Joell's general character. The press looked unkindly on Stewart's defense, claiming that his cross-examination "subjected [Hauz] to the humiliating questions of a black lawyer who defended the black act of his black client in a black way, xiz, [sic] by again insulting the girl."⁵⁸ The court convicted Joell and fined him forty dollars.⁵⁹

Later in 1907, Stewart represented the administrator in a hotly-contested probate case involving an Afro-American hotel

53. *Taylor v. Cohn*, 47 Or. 538, 84 P. 388 (1906); Bell, *Forward—An Issue on Race Relations*, 61 OR. L. REV. 151, 154 (1982) (noting attempted exclusion of Afro-Americans from Oregon in its early history); see Hill, *The Negro as a Political and Social Issue in the Oregon Country*, 33 J. NEGRO HIST. 130 (1948) (discussing treatment of Afro-Americans in early history of Oregon); L. Davis, *Blacks in the State of Oregon 1788-1974*, at 11 (July, 1974, mimeograph) (same). As one commentator explained, "The presence of exclusion laws did not deter blacks from emigrating to Oregon in slowly increasing numbers throughout the Nineteenth Century, but their activities were strictly circumscribed by law, and their rights were almost nonexistent." Bell, *supra*, at 154; see also E. MCLAGAN *supra*, note 47, at 23-60 (discussing exclusion laws and slavery in Oregon).

54. *Costs Negro \$40 to Insult Woman*, Evening Telegram, Apr. 29, 1907; *Negro Editor Follows Girl*, Sunday Mercury, Apr. 27, 1907.

55. See *Girl Must Tell Who Made Threat*, Portland Journal, Apr., 1907.

56. *Stench Smells to the Heavens*, Welcome, Apr. 27, 1907.

57. *A Mean Black Hypocritical Howler*, Peoples Press, Apr. 27, 1907.

58. *A City's Disgrace*, Peoples Press, May 4, 1907.

59. *Was Treated Unjustly*, Advocate, May 4, 1907.

porter's estate. A white woman contested the decedent's father's claim in this case. During the hearing, Stewart conceded that the woman deserved a portion of the estate because she had given money to the decedent, her "Negro friend," to deposit in the bank.⁶⁰ The outcome of this case is not known.

McCants Stewart apparently enjoyed a favorable professional relationship with the white bar of Oregon. In 1908, for example, the Portland firm of Snow and McCamant asked Stewart to review a brief involving a matter similar to one he had argued before the Oregon Supreme Court.⁶¹ Stewart's response to this request reveals technical skill and an eye for detail. Stewart wrote:

You will never realize how very much I appreciate and thank you for your brief, which you were filing in the [Oregon] Supreme Court in the case of State—vs—Ross, a copy of which you sent to me a few days ago. I have carefully examined it and mean to go over it again. It is exceptionally strong. The analytical thought, in particular, as shown in all of the arguments display[s] a depth of mind unusually rich bringing great credit to the Oregon Bar.⁶²

This represented high praise from McCants Stewart, a master of pleading and procedure. This mastery is illustrated by a 1908 case in which Stewart represented an Afro-American man charged with beating his wife. Stewart's client denied the act, but was found guilty by a judge authorized to impose sanctions no greater than fines of up to fifty dollars in such cases. Despite this restraint, the judge sentenced Stewart's client to six months in jail.⁶³ Stewart filed a writ of habeas corpus and the circuit court invalidated the sentence that the lower court had imposed.⁶⁴

In 1908, Governor George Erie Chamberlain appointed McCants Stewart to represent Oregon at the National Negro Fair in Mobile, Alabama. Stewart joined a select group of "commissioners" chosen by governors of twenty-four states to attend the meeting. According to the Mobile press, the purpose "of

60. See *White Girl Wants to Share Porter's Estate*, Evening Telegram, May 1, 1907; *Claims a Negro's Estate*, Morning Oregonian, May 1, 1907.

61. Letter from Wallace McCamant to McCants Stewart (Sept. 26, 1908). At one time, McCamant served as a justice on the Supreme Court of Oregon. See McCamant, *Toasts to Judges Wolverton and Bean*, 4 OR. L. REV. 69 (1924).

62. Letter from McCants Stewart to Wallace McCamant (Oct. 7, 1908) (regarding brief for *State v. Ross*, 55 Or. 450, 104 P. 596 (1909), *aff'd*, 227 U.S. 150 (1913)).

63. *Man Weeps as Sentence is Said*, Oregon Daily Journal, July 17, 1908.

64. *Test Case Filed*, Sunday Oregonian, July 19, 1908; *Negro's Sentence Declared Illegal*, Evening Telegram, July 22, 1908; *Van Zante is Reversed*, Daily News, July 22, 1908.

the meeting is to arouse race interest in the . . . fair."⁶⁵ Stewart featured prominently among the speakers.⁶⁶ The public respect Stewart won for his excellent advocacy, as well as his close association with the Republican Party, probably also prompted the governor to appoint Stewart chief commissioner to the Natural Emancipation Commemorative Society, which President William Howard Taft organized in 1909.

Despite legal victories and public honors, Stewart also experienced hardship. Stewart faced the destruction of his office by fire in July, 1908. Fortunately, the *Advocate*, an Afro-American newspaper in Portland, allowed Stewart to use its offices during the restoration of his building.⁶⁷ The unfortunate occurrence did not dampen Stewart's determination to maintain his practice.

Stewart suffered another, more devastating, personal setback when a 1909 streetcar accident necessitated amputation of his left leg.⁶⁸ Life slowed for Stewart after his accident. During his convalescence, however, another Afro-American lawyer, L.H. Dawley, began to practice law in Portland. The two lawyers' court appearances, often on opposing sides, drew public attention.⁶⁹

Stewart also experienced racial discrimination in Portland. In September of 1911, for example, Stewart stopped at the door of a restaurant while walking home from a banquet and greeted friends dining inside. As Stewart stood in the doorway, Officer B.G. Marsh of the Portland Police Department ordered him to move on, threatening to arrest him if he refused to comply. Stewart objected, believing that he had violated no law. Apparently unwilling to have his authority publicly questioned by an Afro-American, Marsh arrested Stewart and required him to walk the mile to the police station on his cork leg.

65. *For National Negro Fair*, Mobile Register, Nov. 24, 1908.

66. *See Honor Portland Lawyer in South*, Oregon Daily Journal, Dec. 19, 1908. Eight years later, Oregon Governor James Whitecombe appointed Stewart as Oregon's commissioner to cooperate with the National Memorial Association for the erection of a memorial in Washington, D.C. in honor of Negro soldiers and sailors who fought in the wars for the United States.

67. *See Attorney McCants Stewart Office Burns*, The Charleston, S.C. Southern Reporter, July 25, 1908. *The Advocate* was the second Afro-American-owned newspaper in Portland and was founded by several local men of Afro-American descent, including Stewart. E. MCLAGAN, *supra* note 47, at 111.

68. *See Minneapolis Man Suffers*, Advocate, May 29, 1909.

69. *See Rev. Matthews Not Guilty*, Advocate (date unknown) (photocopy on file at Minnesota Law Review offices).

Marsh booked Stewart for drunkenness,⁷⁰ but police authorities refused to charge him. The next day, Stewart filed a formal complaint of assault and battery with the District Attorney, who issued a warrant against Marsh. Marsh adhered to his version of the incident, stating that Stewart "was much under the influence of liquor."⁷¹

At the hearing, Stewart "brought numerous witnesses to prove that he had been at a banquet . . . where nothing more arduous than an infusion of leaves of Cathay was served to wash down the noodles and chop suey."⁷² The court nevertheless dismissed the complaint against Marsh. Stewart appealed his case to Portland's mayor, asking the mayor to direct Portland's Executive Board to review the matter. Stewart publicized his account of the incident in a letter to the *Portland Daily Journal*. The letter alleged that Officer Marsh possessed a "quarrelsome disposition" and that he had "committed a wanton, willful assault and battery upon [Stewart], without cause."⁷³ It is not known whether Portland's mayor or the city's Executive Board became involved in the matter. It may be that Stewart won his case in the eyes of the public, because even the white press ultimately conceded that Marsh "would take no 'lip' from a colored lawyer."⁷⁴

McCants Stewart also challenged racial injustice on a larger scale. In the face of public animosity, he criticized the federal government's failure to protect Afro-Americans from physical brutality in southern states. In December 1914, Stewart publicly criticized Woodrow Wilson's failure to halt the lynching of Afro-Americans in the south, helping to draft resolutions "censuring President Wilson for not interfering when five negroes [were] lynched in the parish of Shreveport, La., within 10 days."⁷⁵ Stewart also reported that "53 colored men and women have been lynched in this country, and no attention has been given to the matter by National authorities."⁷⁶ Even

70. *Negro Lawyer Aroused*, Morning Oregonian, Sept. 20, 1911.

71. *Negro Lawyer and Policeman Fight*, Evening Telegram, Sept. 19, 1911.

72. *Chop Suey Court Study*, Morning Oregonian, Oct. 3, 1911.

73. *Says Policeman Acted Cruelly*, Portland Daily Journal, Sept. 20, 1911.

74. Morning Oregonian, Sept. 21, 1911.

75. *Wilson is Condemned for Recent Lynchings*, Morning Oregonian, Dec. 14, 1914; see also R. GINZBURG, 100 YEARS OF LYNCHINGS 94, 267 (1988) (noting 54 lynchings in 1914, one of which had occurred in Oregon on July 17, 1914).

76. *Wilson is Condemned for Recent Lynchings*, Morning Oregonian, Dec. 14, 1914.

in a northwestern city such as Portland, an Afro-American ran extreme risks in writing such words.

Although far removed geographically from his southern brothers and sisters, Stewart refused to isolate himself from their plight and their quest for liberty and equal treatment. Stewart constantly sought speakers sympathetic to his people for engagements in Portland. For example, Stewart invited Chicago Mayor William Hale Thompson to Portland in 1915. Mayor Thompson, "considered one of the best friends [of] the colored race . . . in the United States,"⁷⁷ accepted when Stewart telegraphed that Portland's Afro-American population planned to honor him and asked him "for 15 minutes of his time."⁷⁸

Stewart remained loyal to the Republican Party and earned its members' respect, but the party provided him neither legal work nor public position. Nonetheless, Stewart always supported Republican candidates for state offices. In 1916, for example, the Oregon Secretary of State, Ben W. Olcott, wrote to Stewart seeking his "support and influence in [Olcott's] candidacy for reelection."⁷⁹

Stewart declined to run for the Oregon House of Representatives in 1916 because he had decided to leave Portland, primarily because the city's racial climate made survival difficult for an Afro-American lawyer, even one with demonstrated competence. Whites considered him a lawyer of the "colored people" and did nothing to help him, while his own people frequently neglected to pay his fees. In 1917, for example, Stewart sued the Afro-American A.M.E. Zion Church for \$264 owed for services rendered in a condemnation proceeding brought against the church by white residents.⁸⁰

According to the *Advocate*, "[t]he decision of Mr. Stewart to locate elsewhere is not a hasty one, for he has had such a

77. *Negroes to Make Gift*, Morning Oregonian, Oct. 12, 1915.

78. *Id.*

Also in 1915, Stewart worked successfully to remove language denying blacks the vote from the Oregon statutes. The exclusionary language had survived the states' 1870 ratification of the fifteenth amendment, which expressly invalidated such provisions. See U.S. CONST. amend. XV; E. MCLAGAN, *supra* note 47, at 161; see also *supra* note 53 (citing sources that discuss Oregon's exclusionary voting laws).

79. Letter from Ben W. Olcott to McCants Stewart (May 12, 1916).

80. *Attorney Sues Church*, *Advocate*, Jan. 20, 1917. There is no question that Stewart had earned his fee; he had won a jury verdict for the church in the amount of \$7,296. *A.M.E. Zion Church Awarded Damages*, *Advocate*, Mar. 4, 1916. See *Golden Rule Is Shut Out in Condemnation Suit*, Morning Oregonian, Feb. 26, 1916.

move under advisement for some time."⁸¹ Mary Katherine Stewart Flippin, Stewart's daughter, reports that her father left Portland because "he simply tired of the great difficulty he faced as an Afro-American lawyer in Portland trying to make a living."⁸² Stewart's departure for San Francisco left Portland with no Afro-American lawyers.⁸³

Stewart's departure saddened both the Afro-American and the white communities. As Stewart prepared to leave Oregon, numerous letters of praise and commendation poured in. Several letters of reference reached California on his behalf. For example, James Whitecombe, the governor of Oregon, sent a letter to California Governor William D. Stephens, introducing Stewart and stating, "I am very glad to give him this letter of introduction . . . and shall appreciate as a personal favor any courtesies you may be able to extend to him."⁸⁴ Portland's legal community provided additional letters of introduction,⁸⁵ and a letter from former Portland Municipal Judge John H. Stevenson appeared in the *Pacific Coast Appeal*, a San Francisco newspaper.⁸⁶ The letters praised Stewart as "reliable and trustworthy,"⁸⁷ for his "considerable degree of ability,"⁸⁸ "[reliability] in his practice, and in his relations with the Court,"⁸⁹ as "a leader of his people . . . man of worth, and a credit to this community . . . fearless,"⁹⁰ as "a gentleman,"⁹¹ and as having

81. *Attorney McCants Stewart to Leave Portland*, *Advocate*, Sept. 29, 1917.

82. Telephone conversation with Mary Katherine Stewart-Flippin (Dec. 2, 1987).

83. *Attorney McCants Stewart to Leave Portland*, *Advocate*, Sept. 29, 1917.

84. Letter from Governor James Whitecombe of Oregon to Governor William D. Stephens of California (Oct. 10, 1917).

85. George Tazwell, County Judge for Multnomah County; George Rossman, Municipal Judge, Portland; John P. Kavanaugh, Presiding Judge, Fourth Judicial Circuit; Joseph H. Jones, District Judge, Multnomah County; and two members of the Oregon Supreme Court, Associate Justices Lawrence T. Harris and Henry L. Benson, sent impressive letters of reference for Stewart.

86. *What Was Said of McCants Stewart*, *Pacific Coast Appeal*, Jan. 5, 1918.

87. Letter from Judge George Tazwell to McCants Stewart (Sept. 28, 1917).

88. Letter from George Rossman to Judge of Municipal Court of San Francisco (Sept. 28, 1917).

89. Letter from Judge John P. Kavanaugh to Chief Justice and Associate Justices of the California Supreme Court (Oct. 11, 1917).

90. Letter from Judge Joseph H. Jones to McCants Stewart (Sept. 27, 1917).

91. Letter from Associate Justice Lawrence T. Harris to McCants Stewart (Oct. 10, 1917).

“an exceptional record for industry and ability as a lawyer.”⁹²

Samuel White, the president of the Oregon State Bar Association, praised Stewart for “high standards of integrity and right living.”⁹³ Even former opponents offered praise. For example, the law firm of Bernstein and Cohen, opposing counsel in *Taylor v. Cohn*,⁹⁴ considered Stewart “a good lawyer, and a fair opponent.”⁹⁵ Armed with these glowing letters, a few dollars, and an earnest desire to succeed, Stewart moved to San Francisco with the hope for a better day.

IV. DAYS OF PRACTICE IN SAN FRANCISCO, CALIFORNIA

The *Vallejo Times*, a San Francisco newspaper, noted the arrival of McCants Stewart in December of 1917.⁹⁶ Stewart initially formed a partnership with another Afro-American lawyer, Oscar Hudson, but their practice in San Francisco floundered and their relationship may have become strained.⁹⁷ A few months after arriving in San Francisco, Stewart returned to Portland to close his law practice, finish his appeal in *Allen v. People's Amusement Co.*,⁹⁸ and bring his family to California.

Stewart had filed a lawsuit on behalf of W.D. Allen, an Afro-American, against the People's Amusement Company, owner of the Star Theater, because the theater “drew the ‘color line’ on the lower floor of the movingpicture [sic] house.”⁹⁹ The

92. Letter from Associate Justice Henry L. Benson to McCants Stewart (Oct. 10, 1917); see also McBride, *Reminiscences of The Oregon Bar*, 2 OR. L. REV. 135, 148 (1923) (mentioning Henry L. Benson).

93. Letter from Samuel White to McCants Stewart (Sept. 28, 1917).

94. 47 Or. 538, 84 P. 388 (1906).

95. Letter from Bernstein and Cohen to Wise and O'Connor (Oct. 11, 1907).

96. See *Colored Lawyer to Locate in This City*, *Vallejo Times*, Dec. 5, 1917.

97. At the time, Hudson served with the Office of Adjutant, Colored California Volunteer Regiment. Hudson had been admitted to the California bar in 1911. G.R. SEGAL, *BLACKS IN THE LAW* 192 (1983). Despite the possible strain in relations between Hudson and Stewart, it appears that Hudson tried to maintain the firm's law practice during Stewart's absence. See Letter from Oscar Hudson to McCants Stewart (Jan. 29, 1918). Unfortunately, Hudson also apparently neglected to pay some of the firm's bills while Stewart was in Portland. In his January 29, 1918 letter to Stewart, Hudson reported: “I am keeping things together as best I can, but I am very short of money. . . . Of course, I do not mind putting out anything that I may have for our mutual interest. . . . I have delayed some very necessary work on my place on account of lack of funds.” *Id.*

98. 85 Or. 636, 167 P. 272 (1917).

99. See *Theater Sued by Negro*, *Morning Oregonian*, Sept. 17, 1917 (reporting incident); *Color Line Causes Suit*, *Evening Telegram*, Sept. 16, 1915 (same);

Star had banned Allen from the main floor despite his purchase of a general admission ticket. Representing Allen, Stewart revived a legal theory he had asserted in *Taylor v. Cohn*¹⁰⁰ eleven years earlier, arguing that the Star Theater had breached a contract with Allen and his wife by refusing to seat them on the main floor. Despite nearly indistinguishable facts, the Oregon Supreme Court sustained the lower court's dismissal of Allen's complaint,¹⁰¹ ignoring the precedent established by *Taylor v. Cohn*. Thus, Stewart, who had fought on behalf of Afro-Americans to integrate Oregon's public accommodations, left the state no better than he had found it in 1903; discrimination in public accommodations there continued.¹⁰²

Returning to San Francisco after the *Allen* appeal, Stewart opened a solo practice at 403 Alto Building, 381 Bush Street. His continuing determination to challenge racial discrimination soon surfaced. In 1918, he applied to the Assessor's Office in Oakland, California, to be commissioned as a notary public. Receiving no response, Stewart wrote back to the assessor, asking: "There is not at this time, nor has there ever been, a colored person commissioned as a Notary Public in and for the City and County of San Francisco. Why is this?"¹⁰³ Apparently, several other Afro-Americans had applied for commissions, yet none received an appointment. It is uncertain whether Stewart ultimately gained a notary public commission. At the least, California Governor William D. Stephens informed Stewart that although there were no vacancies in San Francisco notaryships at that time, his name would be considered when the first vacancy occurred.¹⁰⁴

In 1918, McCants Stewart, facing blindness, plagued by debt, and unable to cope with the idea that his wife and daughter would be burdened with his care, took his own life in San Francisco.

Rights to Any Seat in a Theater, Advocate, Sept. 8, 1917 (same); *Allen Theatre Case*, Peoples Bulletin, Sept. 21, 1917 (same).

100. 47 Or. 538, 84 P. 388 (1906).

101. *Allen*, 85 Or. at 638, 167 P. at 272; see *Allen Loses Suit in Supreme Court*, Advocate, Sept. 15, 1917.

102. As late as 1917, Oregon, which had gained statehood in 1859, retained an "anti Negro" clause in state statutes, although the statute apparently remained inactive. 17 THE NEW INTERNATIONAL ENCYCLOPAEDIA 554 (1925).

103. Letter from McCants Stewart to Harry Jones, State Assessor (Oct. 5, 1918).

104. *Id.* Stewart reported this information from the Governor in a post-script to his letter to Jones.

CONCLUSION

A legal pioneer of the Pacific northwest, McCants Stewart valiantly attempted and succeeded in his quest to enter the legal system of the United States. Stewart was a champion of Afro-Americans during his short life of forty-one years. Despite the struggles he faced in practice and life, Stewart forgot neither the plight of his people nor the opportunities he gained at the University of Minnesota Law School. Stewart will be remembered, first and foremost, as a skilled practitioner of the law in the northwestern United States. He also will be remembered as the first person to prevail under the 1897 Minnesota civil rights laws, as one of the first Afro-Americans to receive a law degree from the University of Minnesota Law School, and as the first Afro-American to receive an LL.M. degree from Minnesota. Stewart was also the first Afro-American to gain admission to the Oregon bar and to argue and to win a case before the Oregon Supreme Court.

McCants Stewart lived with great energy and carried on a mission of achievement and excellence. He fulfilled the future anticipated at Tuskegee Institute in 1896, becoming both a lawyer and a success.