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### A Tribute to Andrew W. McThenia, Jr.

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Thomas L. Shaffer\*

Uncas picked up a five-letter name when he was a boarding school student in Orange, Virginia. By now, it is the way his friends and colleagues, his students and his clients, his wife and his children and his neighbors, identify him. It works throughout the United States and in Canada. I would not be surprised to see it work in, say, the offices of the European Union in Salzburg or in the former Soviet Union. (It occurs to me that this universal name for Andrew W. McThenia, Jr., a name his boarding-school classmates borrowed from James Fenimore Cooper, shares brevity with such two-syllable, five-letter names as Moses and Jesus. The comparison has some promise, but I desist in order not to embarrass my retiring friend.)

It is a safe guess that all of the tributes that appear here will mention Uncas as a friend – both in the ordinary American sense, meaning someone who loves you, and in the Greek sense, meaning someone with whom you collaborate in the good. Friend is the way people in my family think about him: Nancy and I and our children lived up the road, on the old way to West Virginia, when he and Anne, and Andy and Paige and Tal, lived at Mackie's Tavern. We were there when Uncas almost invented a perpetual motion pump to get water from the stream in front of the house to his pond without electricity or gasoline. We were there dozens of times – eating, drinking a little wine, swimming in the pond, and chasing horses that would not stay inside the fence – when he and Anne entertained guests of every social and ecclesiastical rank.

Every person in our family (including those of our children who had moved on and met Uncas and Anne only on holidays) would say, as Nancy and I would, that Uncas is our friend. Good friend. The sort that would do anything for you. Anything honest and decent. And, I suppose, if what a friend wanted from him were dishonest or indecent, friend Uncas would find a way to redeem it before he did it. He can redeem a friend's dishonesty and indecency because he knows without pondering that each of his friends – each of his students, each of them a friend – is a gift from God.

He is one of the least pretentious thinkers in our trade, but he really is a thinker. When I search for words for Uncas as an intellectual, I am drawn to the essay he wrote about the late Christian lawyer and theologian William Stringfellow. Uncas is too modest to claim resemblances, but I see a resemblance between what he believes and does and what he wrote that Stringfellow believed and did.

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With one important exception: Uncas is a lot less solemn about thinking than Stringfellow was. Stringfellow, for all of the saintly virtues Uncas wrote about, was a glum person; Uncas is not glum. He probably has had some glum days, but I cannot think of any as I write this.

Uncas, as Stringfellow was, is a lawyer and a churchman (same denomination, in fact). And he, like Stringfellow, sees the combination as odd, as a life in "relentless tension." Uncas is fond of quoting Flannery O'Connor's paraphrase of the Gospel: You shall know the truth, and the truth will make you odd. He enjoys the quotation, more than either Stringfellow or O'Connor would, because Uncas has sense of irony; he seems to know that irony, down deep, brings a knowing smile.

His is a life rooted in worship. Many of his friends know that from praying with him, and for him, as we know that he prays for us. (I think of kneeling beside him at the quiet, sparsely attended early service at St. Bob's in Lexington.)

Effective prayer, too -- although he knows that effectiveness is limited by what God has in mind. Uncas is rooted in prayerful conscience, which he sees as "the breaking in of the Holy Spirit."<sup>8</sup> Uncas wrote that conscience, if a person (a lawyer) listens carefully, is both "utterly unpredictable" and "intensely political."<sup>9</sup> He is, to be sure, unpredictable and political; his friends will understand better the things he surprises us with if we understand that they come from Uncas's prayerful conscience.

I learn from him that conscience is where the tension is. And so Uncas talks about a spiritual life, a churchly life, as he talks about being a believer who proposed to, one way or another, teach and practice law. (I think of Bill Stringfellow's saying somewhere that he did not practice a profession, but that he was a biblical person who worked in the law.)

Uncas has lived out his own relentless tension by joining striking miners who, with him, lay down in front of coal trucks in southwestern Virginia. He has lived it out with picketers and law breakers in the streets of Washington, D.C. At the "professional" end of the tension, he has lived his conscience just as much when he maintained influential friendships with partners in Hunton and Williams and sat as a member of the Virginia component of the Commissioners on Uniform State Laws. He has even written law review articles published in such places as New Haven, Connecticut.<sup>10</sup>

8. Andrew W. McThenia, *An Uneasy Relationship with the Law*, in RADICAL CHRISTIAN AND EXEMPLARY LAWYER 167, 175 (Andrew W. McThenia, Jr. ed., 1995).

9. *Id.*

10. Andrew W. McThenia, Jr. & Thomas L. Shaffer, *For Reconciliation*, 94 YALE L.J. 1660 (1985).

One way to meditate on Uncas's special way of living in relentless tension is to understand that he is a prophet – in the Hebrew Prophet sense. Uncas has been a Hebrew Prophet in law review articles and speeches and such things as his essay on Stringfellow. But mostly he has courted offense in more direct ways, understanding, as he said of Stringfellow, that "the offense of prophecy has always been in its particularity."<sup>11</sup>

He offends (and somehow manages not to offend for long) in faculty meetings and learned colloquia. He offends in the church; his witness there is like the witness of the Hebrew Prophets in Israel: "The mainline church," he said, "has made a near fatal accommodation with power" in America.<sup>12</sup> It has nourished and protected distinctions among people (gender, racial, sexual-preference distinctions). He says, even in church, that the church manages not to see – has to depend on its prophets to remind it of – "more radical theological differences about who God is and how we respond to God's world."<sup>13</sup>

The law is also a protector of differences, and the law is less likely than the church to hear its prophets (not that that fact would silence Uncas): "Without a view of the world beyond difference it is inevitable that we will put ourselves or our institutions – like the law – where God ought to be."<sup>14</sup>

Uncas finds the church in church buildings and offices, but he also has a way of finding the church where he finds it: "wherever two or three are gathered together in My name."<sup>15</sup> Not least at St. Bob's but not only there. I found the community of conversation at Uncas's law school to be more open to Christian moral discernment than any other community I have lived in (including church communities).

There is no way my friend Uncas will not sooner or later say what he thinks about a moral situation, and to explain with uncanny candor how he comes to think as he does. As he puts it: "Christianity offers not a standard for rational criticism but a vocation to worship and witness that may be lived out anywhere, including within the calling of the law."<sup>16</sup>

Candor – being unpredictable and political – is how Uncas manages to be a remarkable lawyer – remarkable particularly in his ability to tell the truth about the law. ("No matter how many layers of bureaucracy separate the Supreme Court from the executioner, it is the voice of law that pulls the switch."<sup>17</sup>) He wrote that he saw Stringfellow (as I did when I first heard

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11. McThenia, *supra* note 8, at 168.

12. *Id.* at 169.

13. *Id.* at 171.

14. *Id.* at 180.

15. *Matthew* 18:20.

16. McThenia, *supra* note 8, at 172.

17. *Id.* at 177.

Stringfellow, in law school in the 1960s) as "a valuable role model for students, providing an important antidote to the image of grey-flannel-suit practitioner."<sup>18</sup> I have seen Uncas have that sort of influence again and again, and he is able to have it because "a lawyer's work of justice is a form of prayer and praise."<sup>19</sup> Uncas does not leave the prayer-and-praise part out. And I doubt that he has ever worn a grey flannel suit.

Because Uncas sees students as gifts who are capable of his kind of prophetic lawyer's life – sees them that way even before he says anything to them – he can both teach the law and see the law as one of the corrupted powers and principalities scripture talks about. He shows in his life how a lawyer with her client, or a teacher with his student, can poke through "[p]rincipalities like the law" that "have a way of destroying people and turning them into problems – problems to be solved rather than lives to be treasured."<sup>20</sup>

It is hard to think of Uncas retired. Probably the most realistic way to look at this new phase in his life is that it won't change much.

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L.H. LaRue\*

As we witness the retirement of Andrew Wolfe McThenia, Jr., we can count ourselves lucky to have walked with him on part of his journey. And not least among his gifts to us has been the pleasure of knowing someone with such a remarkable nickname as "Uncas." The canonical story behind his name is that during his misspent youth he cut his hair according to the fashion once known as a Mohawk. It must have been a remarkable sight, since his peers in Lewisburg, West Virginia, decided that he looked like the hero in the movie based on the novel by James Fenimore Cooper, and so they called him "Uncas." It is not revealed in the canonical version of the story whether the act of naming was an act of respect or of derision, but in the W&L community, we have received it as an act of affection.

But his gifts to us run deeper than a name. I am somewhat embarrassed to be chosen to write because my own personal debt is so great; I owe him my job. When Robert E. R. Huntley was dean-designate, his first assignment was to take over the hiring process for the next year, and he chose two rookies, one

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18. *Id.* at 170-71.

19. *Id.* at 177.

20. *Id.* at 179.

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