



2014

## A Tribute to Vincent L. McKusick, 1921—2014

Derek P. Langhauser

Follow this and additional works at: <http://lawrepository.ualr.edu/appellatepracticeprocess>



Part of the [Judges Commons](#)

---

### Recommended Citation

Derek P. Langhauser, *A Tribute to Vincent L. McKusick, 1921—2014*, 15 J. APP. PRAC. & PROCESS 147 (2014).

Available at: <http://lawrepository.ualr.edu/appellatepracticeprocess/vol15/iss2/2>

This document is brought to you for free and open access by Bowen Law Repository: Scholarship & Archives. It has been accepted for inclusion in The Journal of Appellate Practice and Process by an authorized administrator of Bowen Law Repository: Scholarship & Archives. For more information, please contact [mmserfass@ualr.edu](mailto:mmserfass@ualr.edu).

# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

ESSAY

---

A TRIBUTE TO VINCENT L. MCKUSICK, 1921 – 2014\*

Derek P. Langhauser\*\*

## I. INTRODUCTION

They say that people in rural Maine live closer to the earth and closer to each other; that the demands of rural life require of them a certain self-reliance and purpose to task; and that their isolation instills in them a deeper sense of place and community. All of that is true of life in the Town of Parkman, which was organized in the middle of the state just two years after the District of Maine separated from Massachusetts and the new state appointed its first chief justice.

Today, Parkman occupies less than forty-seven square miles, counts little more than 800 residents, and has one main

---

\*This essay is adapted from remarks prepared for delivery to the Council of the American Law Institute. The author is indebted to Nancy Rabasca, librarian of the Nathan and Henry B. Cleaves Law Library in Portland, Maine, and long-time valued research assistant to the Chief, his Court, and the author. Because of Ms. Rabasca's extraordinary diligence, the primary sources used for this Tribute included interviews, videos, publications, and over a hundred newspaper clippings (many not fully sourced or specifically dated) reaching back to 1954. Additional sources included the McKusick family and the author's own research and recollections. Where the source for cited material is known, it is cited.

\*\*The author is a Maine lawyer who had the opportunity to work with the Chief in a variety of professional capacities for almost thirty years. This essay is written as a personal appreciation.

road. This is farming country, dairy and crop, where fields of fertile soil yield to forested tracts and expansive views of mountains to the west. It is also the birthplace and final resting place of Vincent Lee McKusick

“The Chief,” as he was known here in his home state, died on December 3, 2014, at age 93. Most of what one needs to know about his professional accomplishments can be told without reference to Parkman. But everything that defined his humility and kindness is best understood with some insight into his roots in this small town.

## II. BEFORE COLLEGE: 1921–1940<sup>1</sup>

Vincent L. McKusick was born on October 21, 1921, on The Lone Elm Farm to Carroll and Ethel McKusick, former educators who returned to Parkman from Vermont to raise the young family that eventually included twins Vincent and Victor. Although “my twin brother was . . . born on the same day, . . . I always make clear that I was born first” because “there are certain perks that go with that,” Vincent once recounted.<sup>2</sup>

The twins “did everything together.”<sup>3</sup> Along with their three older siblings, they shared in the daily demands of the farm: chopping wood, tending the cows, and delivering milk along a local route. This rural upbringing was, Vincent recalled, “just about as near perfect as it really could be. We got a whole lot of work ethic pounded into us. We were expected to work hard on the farm. The habit of work was very important.”<sup>4</sup>

The twins were home-schooled by their mother until they entered a one-room, one-teacher school for grades two through

---

1. Much of the information and some of the quoted language in these first sections about the Chief’s early years comes from a 2001 interview maintained in the Edmund S. Muskie Archives and Special Collections Library of Bates College [hereinafter Bates Interview]. An electronic copy of the interview transcript is available at <http://digilib.bates.edu/collect/muskieor/index/assoc/HASH0178/2b0453b3.dir/doc.pdf> (accessed Mar. 17, 2015; copy on file with Journal of Appellate Practice and Process).

2. *Id.*

3. *Id.*

4. *Bill Green’s Maine: Twins Vincent and Victor McKusick* (WCSH television broadcast Apr. 13, 2010) [hereinafter WCSH Interview]. An archived copy of the interview is available at <http://archive.wcsh6.com/news/local/story.aspx?storyid=116591> (accessed Mar. 23, 2015; copy on file with Journal of Appellate Practice and Process).

nine. Later, in the local high school, Vincent was inspired by public speaking and Victor by biology. In 1940, they graduated as co-valedictorians of the largest class—twenty-eight—that their small high school had ever known.<sup>5</sup>

### III. COLLEGE AND THE ARMY: 1940–1946

To maximize their access to college scholarships, including the aid that would enable Vincent to afford his \$250 tuition, the twins went separate ways for college: Victor to Tufts University for its medical school, and Vincent to Bates College for its debating program.<sup>6</sup> While at Bates, Vincent carried forward his farming work ethic. He took summer classes and worked at the local hospital, serving as its overnight telephone operator.<sup>7</sup> As a debater, he followed in the footsteps of Edmund Muskie and Frank Coffin, two Bates men who were accomplished collegiate debaters,<sup>8</sup> learning the importance and necessity of research and careful preparation.

He graduated from Bates in 1943 after only three years, and promptly joined the Army, which assigned him to basic training, two specialized engineering programs, and, finally, a small research group headquartered out west. The essential task of that group was to figure out how to develop thirty-two glass-fuse detonators that could fire simultaneously.

Extraordinary secrecy prevented Vincent from knowing at the time why simultaneous detonation was required. Only later would he learn that he was working on the explosives side of a device that also had a nuclear side; that a staggered detonation on the explosives side would prevent the required ignition and reaction on the nuclear side; that this was the Manhattan Project; and that the two bombs that resulted from this work in Los Alamos, New Mexico, would be used to end World War II.<sup>9</sup> Often asked, Vincent expressed no regrets for how his work was

---

5. *Id.*

6. Vincent was also drawn to Bates because his father and at least one of his siblings went there. Bates Interview, *supra* note 1.

7. Fred C. Scribner, Jr., *Vincent L. McKusick: Chief Justice of the Maine Supreme Judicial Court*, 43 ME. L. REV. 315, 316 (1991).

8. Bates Interview, *supra* note 1.

9. *Id.*; see also WCSH Interview, *supra* note 4.

ultimately used. He always mentioned the severe Japanese determination at the time, and noted that the prospect of losing up to a million soldiers in an invasion of Japan left no room for second thoughts.<sup>10</sup>

#### IV. GRADUATE AND LAW SCHOOLS: 1946–1950<sup>11</sup>

After three years in the Army, Vincent enrolled at MIT, where he earned both B.S. and M.S. degrees in electrical engineering. Intent on pairing this expertise with his prior interest in debating, Vincent enrolled the following year in Harvard Law School to become, as he would later joke, “the world’s greatest patent lawyer.”<sup>12</sup> But when he realized that much of patent law is application work that focuses on placement of “limiting adjectives and adverbs,” he was not inspired; it reminded him of chopping wood back on the dairy farm.<sup>13</sup> So he looked more broadly at the law, and it looked favorably back upon him.

After his first year of law school, Vincent finished thirteenth in a class of about 550, and squarely in the middle of the twenty-six students who made law review. The next year, even though he was not first in his class, he was elected President of the Harvard Law Review. That was the good news. The bad news was that Dean Griswold directed him both to publish three lagging issues from the prior volume and then publish all eight issues of his own volume—Volume 63, he would have us know—and, furthermore, to do so while incorporating innovations such as “Developments in the Law,” “Supreme Court Notes” and “Comments.” Vincent did in fact produce all eleven issues on time; he was then, and remains, the

---

10. See, e.g., LawInterview.com, Interview Archives, *The Hon. Vincent L. McKusick*, [http://www.lawinterview.com/interviewmaster\\_archive\\_09\\_02.html](http://www.lawinterview.com/interviewmaster_archive_09_02.html) (“Of course, at the time we were all perfectly convinced that it was necessary to bring the Japanese war to a quick end or there would otherwise be a heavy loss of life. The Japanese homeland was going to be invaded. That was the next step.”) (accessed Apr. 1, 2015; copy on file with Journal of Appellate Practice and Process) [hereinafter LawInterview.com Interview].

11. Much of the information about these years comes from the McKusick Oral History, a recorded interview that is part of the Cleaves Oral History Collection of the Nathan and Henry B. Cleaves Law Library [hereinafter Cleaves Interview].

12. LawInterview.com Interview, *supra* note 10.

13. Bates Interview, *supra* note 1.

only Harvard Law Review President ever to do so. And he even managed to include all of the Griswold innovations.

#### V. CLERKSHIPS: 1950–1952

Vincent graduated *magna cum laude* from the Law School in 1951. With four degrees from three schools, the Chief considered himself “an overeducated fellow.” Others uniformly recognized his promise. Judge Learned Hand of the Second Circuit, then 80 years old, accepted Dean Griswold’s recommendation and chose Vincent as his clerk. Vincent greatly enjoyed this clerkship, later joking that his primary assignment that year was to find cases that cited prior Hand opinions so it would not be so obvious that the judge was really just citing himself.

That same year, Nancy Elizabeth Green, a young woman from Massachusetts, chose Vincent for a husband, and the Portland law firm now known as Pierce Atwood chose him as an associate. “I could have gone to a few other places that would have taken me too,”<sup>14</sup> he once said, but Nancy and he desired to “raise their family in Maine and to give their children . . . the . . . benefits [of] a Maine birth, upbringing, and education.”<sup>15</sup> After Vincent accepted the firm’s offer, Justice Frankfurter of the United States Supreme Court also heeded a Griswold recommendation and offered Vincent a clerkship. Ever the gentleman, Vincent asked the Portland firm if he could postpone his start in order to accommodate this clerkship. As one of the firm’s partners would later note, “the question answered itself.”<sup>16</sup>

It was during this clerkship that Vincent met his life-long friend William H. Rehnquist, who was then clerking for Justice Jackson. He also recalled of his Frankfurter clerkship a particularly long assignment researching whether the term “sacrilegious” was too indefinite to allow the Court to uphold a

---

14. WCSH Interview, *supra* note 4.

15. Scribner, *supra* note 7, at 318.

16. *Id.*

New York statute criminalizing such behavior,<sup>17</sup> and the Court's historic decision in *Youngstown Sheet & Tube*.<sup>18</sup>

## VI. PRIVATE PRACTICE: 1952–1977

When his Frankfurter clerkship ended in 1952, Vincent returned to Maine where, after earning the highest mark on the bar exam that year, he started at his new firm. As Pierce Atwood's hiring partner would later recall:

[b]ecause no office space was available when Vincent reported for work at Portland, he moved from the spacious surroundings of the Supreme Court of the United States to a desk in the library of the Maine firm, [but] [h]e never complained or objected . . . [and] willingly undertook to do the many uninteresting tasks that were typically the lot of the youngest member of any small New England law firm.<sup>19</sup>

Working primarily on matters involving telephone companies, electrical utilities, manufacturers, and railroads, Vincent made partner in just two years. This was fast even by the standards of the day. His work was prodigious, with one partner eventually recalling that “sharing an associate with Vincent was like sharing a carrot with a rabbit.” Indeed, he obviously generated enough work to keep any number of associates busy: His professional accomplishments over the next twenty-five years were varied and substantial.

For example, Vincent served as counsel in twenty-eight cases reported by the Maine Supreme Judicial Court.<sup>20</sup> He was a

17. This research was relevant to *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952) (holding “sacrilegious” to be unconstitutionally vague).

18. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

19. Scribner, *supra* note 7, at 318 (also noting that Vincent was tasked with keeping the water cooler filled, a job that fell by tradition to the firm's newest member, but that the senior members at Pierce Atwood soon realized that their new associate's time was better spent on legal work).

20. *New England Tel. & Tel. Co. v. Pub. Util. Comm'n*, 376 A.2d 448 (1977); *New England Tel. & Tel. Co. v. Pub. Util. Comm'n*, 362 A.2d 741 (1976); *New England Tel. & Tel. Co. v. Pub. Util. Comm'n*, 354 A.2d 753 (1976); *Bd. of County Comm'rs v. Me. Cent. R. Co.*, 343 A.2d 877 (1975); *In re Lefebvre*, 343 A.2d 204 (1975); *Hiram Ricker and Sons v. Students Intern. Meditation Soc.*, 342 A.2d 262 (1975); *Me. Turnpike Auth. v. Brennan*, 342 A.2d 719 (1975); *New England Tel. & Tel. Co. v. Pub. Util. Comm'n*, 329 A.2d 792 (1974); *Pool Beach Ass'n v. City of Biddeford*, 328 A.2d 131 (1974); *Lewiston, Greene &*

Maine Commissioner of, and then Secretary to, the National Conference on Uniform State Laws, and chaired the ABA's Federal Rules Committee.<sup>21</sup> Even though, as would later note, "the old-timers were a little cool to it,"<sup>22</sup> he joined and soon led the effort to modernize the state rules of procedure, co-authoring the first edition of *Maine Civil Practice*. This exhaustive treatment of Maine's civil rules and their interpretation, first published in 1959, remains the classic text for practicing lawyers today.<sup>23</sup>

During this time, Vincent's national stature began to rise. He chaired the Board of Editors of the ABA Journal, the ABA's leading publication. In 1974 he declined United States Attorney General Edward Levi's offer to become Deputy Attorney General. In November of 1975, news reports indicated that Vincent was one of four finalists—and the only one not a judge on one of the federal courts of appeals—being considered by President Ford to succeed Justice Douglas, a seat that eventually went to John Paul Stevens.<sup>24</sup>

---

Monmouth Tel. Co. v. New England Tel. & Tel. Co., 299 A.2d 895 (1973); Gould v. Bangor & Aroostook R. Co., 292 A.2d 837 (1972); Good Will Home Ass'n v. Erwin, 285 A.2d 374 (1971); Louisa T. York Orphan Asylum v. Erwin, 281 A.2d 453 (1971); In re United Parcel Service, Inc., 256 A.2d 443 (1969); City of Waterville v. Bartell Tel. TV Sys., 233 A.2d 711 (1967); Biddeford & Saco Gas Co. v. Portland Gas Light Co., 233 A.2d 730 (1967); Eastern Maine Elec. Co-op., Inc. v. Maine Yankee Atomic Power Co., 225 A.2d 414 (1967); Kittery Elec. Light Co. v. Assessors of Town of Kittery, 219 A.2d 728 (1966); Kittery Elec. Light Co. v. Assessors of Town of Kittery, 219 A.2d 744 (1966); Bates Mfg. Co. v. Franklin Co., 218 A.2d 366 (1966); Gifford v. Central Maine Power Co., 217 A.2d 200 (1966); Public Service Co. of N.H. v. Assessors of Town of Berwick, 183 A.2d 205 (1962); Murray v. Sullivan, 179 A.2d 307 (1962); First Portland Nat'l Bank v. Rodrique, 172 A.2d 107 (1961); City of Bangor v. Pub. Util. Comm'n, 167 A.2d 6 (1960); Central Maine Power Co. v. Pub. Util. Comm'n, 163 A.2d 762 (1960); Maine Cent. R. Co. v. Pub. Util. Comm'n, 163 A.2d 633 (1960); Central Maine Power Co. v. Pub. Util. Comm'n, 136 A.2d 726 (1957).

21. During this same time, the Chief was also a Member of the Advisory Committee on the Rules Civil Procedure of the Maine Supreme Judicial Court, and Chairman of the drafting committee of the Jury Selection and Service Act (now codified at 28 U.S.C. § 1861 *et seq.*).

22. Cleaves Interview, *supra* note 11.

23. See RICHARD H. FIELD & VINCENT L. MCKUSICK, MAINE CIVIL PRACTICE (1959 & supps. 1962 & 1967); VINCENT L. MCKUSICK & L. KINVIN WROTH, MAINE CIVIL PRACTICE (2d ed. 1970 & supps. 1972, 1974 & 1977). Since updated by Charles A. Harvey, Jr., with the assistance of Peter L. Murray and William J. Kayatta, Jr., the book is now in its third edition.

24. See, e.g., David E. Rosenbaum, *Ford "Expediting" Decision on Court*, N.Y. TIMES, Nov. 27, 1975, at 41 ("The Federal Bureau of Investigation is conducting field

Vincent was also busy with Nancy raising their four young children. And the skills of preparation, navigation, and judgment that made Vincent a superb lawyer drew him to sailing. Perhaps embracing, especially as an engineer, the oft-quoted truth that “there is *nothing*—absolutely nothing—half so much worth doing as simply messing about in boats,”<sup>25</sup> Vincent and his family enjoyed cruising in the coastal waters of Maine. Those who know boats recognize that Vincent’s boat of choice—a Catalina 30—has long been praised for its depth, balance, efficiency, and stability. How appropriate.

## VII. CHIEF JUSTICE: 1977–1992

On August 9, 1977, Maine’s Governor James Longley did something that no Maine governor had done since 1822 when the new state’s first governor, William King, nominated Prentiss Mellen to be its first Chief Justice: He nominated an attorney, and not a sitting judge, to be Chief Justice.<sup>26</sup> Despite the position’s salary of \$27,600—the lowest in the country—Vincent accepted the nomination.<sup>27</sup> As a Portland Press Herald columnist would later note, Vincent’s “legal brilliance was so widely acknowledged that nobody complained about his jumping the line.”<sup>28</sup> Indeed, Vincent was unanimously confirmed just thirty-eight days after his nomination was posted.<sup>29</sup> Harvard’s Paul Freund later wrote that Vincent’s

---

investigations at Mr. Ford’s behest of several potential Supreme Court nominees. Among them are Vincent McKusick, a lawyer in Portland, Me. and three judges of the United States Courts of Appeals—Arlin M. Adams of the Third Circuit and Philip W. Tone and John Paul Stevens of the Seventh Circuit.”); *cf.* DAVID ALISTAIR YALOF, PURSUIT OF JUSTICES: PRESIDENTIAL POLITICS AND THE SELECTION OF SUPREME COURT NOMINEES 127–28 (1999) (indicating that the Chief was on the initial list of potential nominees that Attorney General Levi sent to President Ford when Justice Douglas’s resignation first appeared imminent, and that, after considering the list, President Ford ranked the Chief second only to John Paul Stevens).

25. KENNETH GRAHAME, *THE WIND IN THE WILLOWS* 9 (1913) (emphasis in original).

26. Steve Mistler, *Vincent McKusick, Bright and Kind Former Chief Justice in Maine, Dies at 93*, <http://www.pressherald.com/2014/12/04/vincent-mckusick-former-maine-chief-justice-dies-at-93/> (Dec. 8, 2014) (accessed Apr. 4, 2015; copy on file with Journal of Appellate Practice and Process).

27. Scribner, *supra* note 7, at 315.

28. This quotation appears in an unattributed news clipping archived at the Cleaves Law Library. *See supra* note \*.

29. L. Kinvin Wroth, *Vincent L. McKusick and the Maine Rules of Civil Procedure: A*

appointment was “vindication of the philosophy of personal federalism, of going back to your home community, strengthening it and drawing strength from it.”<sup>30</sup>

The Chief began his tenure in the fall of 1977. In 1984, even with his Republican roots, he was re-nominated by a Democratic governor and unanimously confirmed by a Democratic senate to another seven-year term.<sup>31</sup> In 1991, as the end of his second seven-year term neared, he led the effort to enact incentives for judges to retire from active judicial service at age 71, which he then respected by retiring himself.<sup>32</sup> Although he was not eager to retire, and the governor did not want him to retire, the Chief reasoned and persuaded others that it was nonetheless the right policy for Maine.

The Chief loved statistics, so he would be pleased to have you know that, by the time he retired from the Court in February 1992, his personal records showed that sat on about 4,000 cases and wrote about 750 opinions.<sup>33</sup> These opinions occupy no fewer than 151 volumes of the second series of the Atlantic Reporter, and he averaged roughly fifty-three opinions per year.<sup>34</sup> In all but the most sharply contested cases, the court spoke unanimously. Indeed, only ten of the Chief’s opinions were dissents,<sup>35</sup> a tribute to the effectiveness of his leadership

*Thirty-Five Year Perspective*, 43 ME. L. REV. 389, 391 n.7 (1991) (indicating that McKusick was confirmed on September 16, 1977).

30. Scribner, *supra* note 7, at 319.

31. *Id.* at 316.

32. LawInterview.com Interview, *supra* note 10.

33. This number appears to include Opinions of the Law Court and dissents, both under his name; Memoranda of Decisions and Advisory Opinions of the Justices that he wrote per curiam; and various other decisions such as apportionment reviews and discipline cases that he also wrote per curiam. Inclusion of these per curiams likely explains why the Chief’s count—accurate, I have no doubt—is higher than those reported by Westlaw (at 605) and Lexis (at 598). Indeed, one former McKusick clerk put the total at 762, and another put it at more than 700. Jeffrey A. Thaler, *A Salute to Chief Justice Vincent L. McKusick and His Art of Country Lawyering in the Big City*, ME. B.J. 322, 322 (Sept. 1993); Eric R. Herlan, *Law as Integrity: Chief Justice McKusick’s Common Law Jurisprudence*, 43 ME. L. REV. 321, 321 (1991).

34. Thaler, *supra* note 33, at 322.

35. In eight of these dissents, the Chief was not alone. *See* State v. Rose, 604 A.2d 24 (Me. 1992); State v. Landry, 600 A.2d 101 (Me. 1991); New England Mortg. Servs. v. Petit, 590 A.2d 1054 (Me. 1991); Bernier v. Raymark Indus., 516 A.2d 534 (Me. 1986); Lavasseur v. Aaron, 503 A.2d 1291 (Me. 1986); Valente v. Bd. of Env’tl. Protection, 461 A.2d 716 (Me. 1983); State v. S.G., 438 A.2d 256 (Me. 1981); State v. Libby, 410 A.2d 562 (Me. 1980). Only twice—in a pair of companion cases—did he dissent alone. *See*

among the seventeen associate justices who held the Court's other six seats during his tenure. The opinions of the Court also grew "more concise and intelligible," and those that the Chief himself wrote were distinct for their clear language and analysis.<sup>36</sup>

During his tenure the Chief also brought significant improvements in the structure and operation of all Maine courts. He unified the judicial branch and streamlined the flow of cases. Despite a sixty-percent increase in filings between 1977 and 1992, the annual number of cases decided and opinions written more than doubled, and the average time from filing to decision

---

Adams v. Buffalo Forge Co., 443 A.2d 932 (Me. 1982); Goodman v. Magnavox Co., 443 A.2d 945 (Me. 1982).

36. L. Kinvin Wroth, *McKusick Played Many Roles Well*, BANGOR DAILY NEWS (Feb. 27, 1992); see also Thaler, *supra* note 33, at 324 (referring to "[h]is clarity of language and analysis and ability to write in a concise and intelligible fashion"); Herlan, *supra* note 33, at 352 (referring to the "clarity in words and thought" demonstrated by the Chief's opinions). It is beyond the scope of this Tribute to try to identify the Chief's most significant or influential opinions. But as one commentator observed, the Law Court during the Chief's tenure "dealt with many new and complex issues, including the continuing expansion of personal injury litigation; the collision of Maine's strong environmental and land-use laws with the forces of population change and economic growth; assimilation of the . . . Maine Criminal Code and the ever-changing constitutional rights of the accused; and a variety of difficult policy issues ranging from the right to die to public access to shorefront lands." Wroth, *supra* this note.

Here is a sampling of the Chief's work: One opinion that received significant public, media, and scholarly attention, and whose fundamental precepts are still being debated and litigated today, is *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989), which limited public access to shorefront lands. Another opinion that garnered significant public attention both in Maine and across the nation was *In re Gardner*, 534 A.2d 947 (Me. 1987), which affirmed a comatose patient's right to die. Two opinions that remain important because they set clear the analysis that applies to state-law employment-discrimination claims were issued in *Maine Human Rights Comm'n v. City of Auburn*, 425 A.2d 990 (Me. 1981) (appeal after remand and new trial) & 408 A.2d 1253 (Me. 1979) (remanding for new trial). An interesting opinion that the state constitutional right to bear arms is not absolute even though the constitution was amended to provide that the right "shall never be questioned" was *State v. Brown*, 571 A.2d 816 (1990). Similarly interesting were the opinion that certain speech rights did not outweigh certain high-school administrative interests in *Solnitz v. Maine Sch. Admin. Dist. No. 59*, 495 A.2d 812 (Me. 1985), and the opinion rejecting a free-exercise challenge to certain state home-schooling requirements in *Blount v. Dept. of Educ. & Cultural Servs.*, 551 A.2d 1377 (Me. 1988). *Darling v. Augusta Mental Health Inst.*, 535 A.2d 421 (1987) provided important guidance on governmental immunity and liability. And on the criminal side, *State v. Murphy*, 496 A.2d 623 (1985), clarified the standard used to determine culpable intent or knowledge.

For brief observations on several of these and other cases, see Thaler at note 33, above. And for a scholarly analysis of the Chief's jurisprudence that highlights three of his opinions (including *Gardner* and *Bell*), see Herlan at note 33, above.

decreased by twenty percent.<sup>37</sup> He bolstered the Administrative Office; established mediation and court-appointed-special-advocate programs; and installed new judicial-discipline and financial-disclosure processes. He increased funding for legal services for the poor and experimented with the use of cameras in trial courtrooms.

Nationally, he was elected to the board of the American Bar Foundation, and served as President of the Conference of Chief Justices, making him “Chief of the Chiefs.” He helped establish the National Judicial Council of the State and Federal Courts, and forged bonds with the Judicial Conference of the United States. Internationally, he worked with the Conference of International Appellate Judges and served on the State Department’s Advisory Committee on Private International Law, leading delegations to China and the former Soviet Union.

As his successor Chief Justice Wathen<sup>38</sup> would note, the Chief “was absolutely tireless,” once pointing out that “[y]ou wouldn’t want to go skiing with him because he would want to dictate ‘mem decs’ on the chairlift.” But this was not the Chief’s most memorable quality. As Chief Justice Wathen put it,

the thing that was really outstanding about him is he was unfailingly kind. I never saw him during those ten years show any irritation with me, or his colleagues, or the lawyers who came before us. That’s not an easy thing to do day in and day out.

Ever humble, the Chief offered this succinct advice to his successor: “Be yourself. You will have different techniques than I and the Court will be better for the change.” And Chief Justice Wathen did initiate his own changes. But one thing did not change, and this was readily apparent when he drove to his first

---

37. Wroth, *supra* note 36; see also State of Maine Judicial Branch, *History of the Maine Courts, Remembering Chief Justice Vincent L. McKusick*, [http://www.courts.maine.gov/news\\_reference/history/mckusick.html](http://www.courts.maine.gov/news_reference/history/mckusick.html) (noting the Chief’s work in molding the Maine courts into a centralized system, in improving the relationship between the judicial branch and the Legislature, and in increasing the administrative efficiency of the Supreme Judicial Court’s processes) (accessed Apr. 1, 2015; copy on file with Journal of Appellate Practice and Process).

38. Daniel E. Wathen was appointed to the Law Court in 1981 and succeeded the Chief in 1992. Nathan and Henry B. Cleaves Law Library, *The Supreme Judicial Court of the State of Maine, 1820 to 2009*, <http://cleaves.org/sjcbios1.htm> (accessed Apr. 1, 2015; copy on file with Journal of Appellate Practice and Process). The Wathen remarks quoted here were made in conversations with the author.

Bench and Bar Conference as Chief Justice. En route, his wife asked, “Is the Chief going to be there?” Startled, Chief Justice Wathen asked, “What do you mean, Judy, I *am* the Chief.” “No,” she replied, “I mean the *real* Chief.”

### VIII. RETURN TO PRACTICE: 1992–2013

Vincent retired from the Court—but not from the law—in February of 1992. In a series of articles and editorials, the statewide newspapers called the Chief “gentle, dignified and considerate; a lucid and compassionate thinker; private but not aloof; a hands-on chief justice.”<sup>39</sup> Then-Chief Justice Rehnquist wrote that although “Vincent has undoubtedly grown in stature and reputation during the time since I first knew him, . . . he has changed very little. . . . [H]e still remains very much of a Maine man, frank and unpretentious.”<sup>40</sup> Of his own transition, Vincent wrote:

I know that song and verse proclaim that you can never go home again, and . . . that common wisdom posits that you never step into the same river twice. Be that as it may, my return to [private practice at] Pierce Atwood . . . after leaving the Court was a warm homecoming. And I felt that I was indeed stepping into the same river, even though a few miles downstream.<sup>41</sup>

It would be an understatement to say that the Chief kept busy after the Court. He served as special master for the United States Supreme Court in three cases involving nine states in boundary, water rights, and property-tax disputes.<sup>42</sup> He served as

---

39. These quotations appear in various unattributed news clippings archived at the Cleaves Law Library. See *supra* note \*. The Maine Law Review also published a series of tributes celebrating the Chief’s accomplishments: William H. Rehnquist, *Vincent L. McKusick*, 43 ME. L. REV. 308 (1991); Roswell B. Perkins, *The National and International Outreach of Justice Vincent L. McKusick*, 43 ME. L. REV. 309 (1991); and Scribner, *supra* note 7. That volume also included two fine substantive articles with McKusick-related themes, Herlan, *supra* note 33, and Wroth, *supra* note 29.

40. Rehnquist, *supra* note 39.

41. Vincent L. McKusick, *A Firm Foundation for Life after the Bench*, 8 J. App. Prac. & Process 275, 277 (2006).

42. Kan. v. Neb. & Colo., 538 U.S. 720 (2003) (allocation of water of Republican River); La. v. Miss., 516 U.S. 22 (1995) (location of state boundary on a stretch of Mississippi River); Conn., Mass., and R.I. v. N.H., 503 U.S. 1002 (1992) (constitutionality of special New Hampshire property tax on a nuclear facility).

a special master for the Massachusetts Supreme Judicial Court in the liquidation of a large insurance company. He presided over substantial arbitrations and mediations from Washington to San Francisco, and joined a State Department delegation to the Republic of Georgia. He also stayed home occasionally, serving pro bono as the chair of an arbitration panel overseeing the secession of a restless island in Casco Bay from the City of Portland.

This was not all. The Chief held leadership positions in the American Philosophical Society, American Arbitration Association, and Supreme Court Historical Society. President George H. W. Bush appointed him to the Permanent Committee for the Oliver Wendell Holmes Devise, and he served for thirty-seven years as a trustee of Bates College. The American Judicature Society and the National Center for State Courts honored him. And so did Cumberland County, naming both the Chief's old courtroom and the expansion of his courthouse for him.<sup>43</sup> In 2006, among all of these ongoing activities and still more honors and awards,<sup>44</sup> the Chief humbly reflected that he still appreciated the fact that others still found use for his "antiquity."<sup>45</sup>

## IX. THE AMERICAN LAW INSTITUTE

Vincent had a particular affinity for The American Law Institute. He became a member in 1961; was elected to its

---

43. In addition to the courthouse, "The Vincent," given by the Maine State Bar Association for the best article published in the Maine Bar Journal, was named for the Chief, as was the McKusick Award, given by the Maine Trial Judges Association to a person who has contributed substantially to the administration of justice and the delivery of judicial services.

44. The Chief's additional awards and honors included the Paul C. Reardon Award of the National Center for State Courts (1999) (for outstanding contributions to the administration of justice nationally); Big M Award from the Maine State Society of Washington, D.C. (co-recipient with brother Victor) (1995); Benjamin E. Mays Award of Bates College (1994); The Maine Prize of the University of Maine (1993) (co-recipient with brother Victor for their "nationally recognized contributions to the quality of life"); Neal W. Allen Award for Community Leadership, Greater Portland Chamber of Commerce (1988); the Herbert Harley Award of the American Judicature Society (1982); and honorary degrees from Colby College (1976); Nason College (1978); University of Southern Maine (1978); Bates College (1979); Bowdoin College (1979); Thomas College (1981); and Suffolk University (1983).

45. McKusick, *supra* note 41, at 279.

Council in 1968; and took emeritus status in 2008. During his four decades on the Council, he served as an Adviser on projects as diverse as Products Liability, Donative Transfers, Federal Securities, and the Federal Judicial Code. He was also a steady and stabilizing force in the challenging discussions that often marked the project on Corporate Governance. In 1992, ALI President Roswell Perkins wrote this about the Chief:

Presiding at Council meetings provides me with a unique opportunity to study the differing styles of the Council members, [and n]o style appeals to me more than that of Justice McKusick. Some of its elements are: (1) total, riveted attention . . . ; (2) an erect physical posture (as if clarity of thought is surely in direct proportion to the precision of spine alignment); (3) adherence to [the] . . . precept that, no matter how informed one may be on the issue at hand, it is better to let others speak first; (4) a keen sense of strategic timing as to when to strike; and (5) unerring aim when the arrow of comment is finally released, to [fend off] . . . other contestants . . . likely to look for new and different targets from the one just skewered.<sup>46</sup>

## X. FAMILY

One of the Chief's long-time colleagues on the Court tells the story of a chance meeting in a hotel lobby in Baltimore about fifteen years ago. As the colleague quickly began to offer his opinions—at length and in detail—on the topics of the day, he was met, uncharacteristically, with no response. He immediately feared that the Chief's stellar acuity was now finally failing. But he was much relieved—albeit somewhat embarrassed—when this reply finally came: “You must have me confused with my twin brother, Vincent.” Even well into their 80s, and even in the eyes of their close associates, the McKusick twins still retained their identical appearance.

Victor died in 2008 at the age of 86. Remarkably, his life was no less accomplished than Vincent's: He was a physician, a geneticist, and a pioneer in gene-mapping research. He was also both chief of medicine at the Johns Hopkins Hospital and

---

46. Perkins, *supra* note 39, at 310.

University Professor of Medical Genetics at the Johns Hopkins School of Medicine, and was a co-founder and co-director of the Short Course in Medical and Experimental Mammalian Genetics, still held annually at the Jackson Laboratory in Bar Harbor, Maine, since 1960. He authored and co-authored twenty-two medical studies and twelve books, including a genetics textbook that, translated into eight languages, is regarded as the authoritative source for medical students throughout the United States and abroad.<sup>47</sup>

In addition to Victor, the Chief was predeceased by his other siblings Harry, Robert, and Grace. He is survived by his wife of sixty-three years, Nancy; their four children Barbara, Jim, Kat, Anne, and their spouses. He is also survived by ten grandchildren and their spouses, and four great-grandchildren. These four generations of the family gathered often at Vincent and Nancy's Cape Elizabeth home, and the Chief treasured those celebrations.

## XI. CONCLUSION

The engineer in Vincent McKusick compelled him to learn exactly how things work. The lawyer in Vincent McKusick enabled him to explain that knowledge with care and reason. And the Mainer in Vincent McKusick reminded him always of his humble roots in Parkman. He was a gift to Maine and a gift to the nation.

In an interview filmed at Victor's gravesite in 2010, Vincent explained that they had picked out "modest granite stones" to sit side by side in the McKusick family section of a small Parkman cemetery. After a long pause—the kind of pause that reveals the full weight of the thought to come next—, Vincent then allowed, "It's reassuring to know that he's going to be right next to me when the time comes for me to join him."<sup>48</sup>

---

47. VICTOR A. MCKUSICK, MENDELIAN INHERITANCE IN MAN; CATALOGS OF AUTOSOMAL DOMINANT, AUTOSOMAL RECESSIVE, AND X-LINKED PHENOTYPES (1976). Now in its twelfth edition, the book is still in print. VICTOR A. MCKUSICK, MENDELIAN INHERITANCE IN MAN: A CATALOG OF HUMAN GENES AND GENETIC DISORDERS (12th ed. 1998).

48. WCSH Interview, *supra* note 4.

That time has now come. Time for Vincent to rejoin Victor. Time for Vincent to return to Parkman. Time for the appellate world to reflect on the Chief, a man of great talents who became Maine's great contribution to American law.

