
VINCENT L. MCKUSICK



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THEY SAY THAT PEOPLE in rural Maine live closer to the earth and closer to each other; that the demands of rural life require a self-reliance and purpose to task; and that their isolation instills a deeper sense of place and community.

The Town of Parkman, Maine, is just such a community. Located in the middle of the state, Parkman was established in 1822, just 2 years after Maine became a state and appointed its first chief justice. Today, Parkman occupies less than 47 square miles, counts little more than 800 residents, and has one main road. This is farming country, where fields of fertile soil yield to expansive views of mountains to the west. Parkman is also the birth and final resting place of Vincent L. McKusick.

“The Chief,” as he was known in our home state, passed away on 3 December 2014. He was 93 years old. Although the Chief’s professional accomplishments can be told without reference to Parkman, everything that defined his humility and kindness is best understood with some insight into the roots he put down in the fertile soil of his small hometown.

BEFORE COLLEGE: 1921–1940

Vincent McKusick was born in 1921 on The Lone Elm Farm. “Incidentally,” Vincent once noted, “my twin brother [Victor] was born on the same day, though I always make clear that I was born first,” adding that “there are certain perks that go with that.” The twins, together with their three older siblings, shared in the daily demands of the farm: chopping wood, tending the cows, and delivering milk along a local route. This rural upbringing was, he recalled, “just about as perfect as it 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 . . .”

The twins were home-schooled until they were 9 years old. Then they attended a one-room, one-teacher school house for grades two through nine. Later, in the local high school, Vincent was inspired by public speaking and Victor by biology, and in 1940, still dressing “exactly alike,” the twins graduated co-valedictorians of the largest class—28—the small high school had ever known.

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 for its medical school, and Vincent to Bates College for its debating program. While at Bates, Vincent carried

forward his farming work ethic, working as a telephone operator at the local hospital from 3 a.m. to 7 a.m. and taking summer classes.

Vincent graduated from Bates in 1943 after only 3 years and promptly began serving in the Army. He was assigned to a small research group whose essential task was to figure out how to develop 32 glass fuse detonators that could fire simultaneously. Only later would he learn why simultaneous detonation was required; 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 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 in 1945 to end World War II.

GRADUATE SCHOOLS AND CLERKSHIPS: 1946–1952

After 3 years in the Army, Vincent enrolled at MIT in 1946 where he earned B.S. and M.S. degrees in electrical engineering. The following year, Vincent enrolled in Harvard Law School, where he was elected President of the Harvard Law Review. That was the good news. The bad news was that Dean Griswold promptly directed Vincent to first get out the three lagging issues from the prior volume and then get all eight issues of Vincent's volume out on time. Vincent did produce all 11 issues—the only Harvard Law Review President ever to do so.

In 1950, Vincent graduated magna cum laude from the Law School, and Learned Hand of the Second Circuit chose Vincent as his clerk. Vincent greatly enjoyed the clerkship, later joking that his primary assignment that year was to find cases citing prior Hand opinions so it would not be so obvious the judge was really just citing himself.

That same year, Nancy Green chose Vincent for a husband, the Portland law firm now known as Pierce Atwood chose him as an associate, and Felix Frankfurter chose him as a clerk for the Supreme Court's 1951–52 Term. It was also during this clerkship that Vincent met his life-long friend William H. Rehnquist, who was then clerking for neighboring Justice Robert Jackson.

PRIVATE PRACTICE: 1952–1977

When this clerkship ended in 1952, Vincent returned to Maine. Working primarily on matters involving utilities and railroads, Vincent made partner in just 2 years. His work was prodigious, with one partner recalling that "sharing an associate with Vincent was like sharing a carrot with a rabbit." His professional accomplishments over the next 25 years would be varied and substantial.

For example, Vincent was counsel in 28 cases reported by the Maine Supreme Judicial Court. He served as a Maine Commissioner of, and then Secretary to, the National Conference on Uniform State Laws and chaired the American Bar Association's (ABA'S) Federal Rules Committee. He led the effort to modernize the state rules of procedure and co-authored the first edition of *Maine Civil Practice*. This exhaustive treatment of Maine's civil rules, first published in 1959, remains the classic text for practicing lawyers today.

During this time, Vincent's national stature began to emerge. He chaired the Board of Editors of the *ABA Journal*, the ABA's leading publication. In 1974, he was offered, but declined, the opportunity to serve as Deputy Attorney General of the United States. And in 1975, he was one of four finalists considered by President Ford to succeed Justice William O. Douglas, a seat that eventually went to John Paul Stevens.

He was also busy helping to raise a young family, and the skills of preparation, navigation, and judgment that made Vincent an excellent lawyer drew him to sailing. Those of us who know boats would recognize that Vincent's boat of choice—a Catalina 30—has long been praised for its depth, balance, efficiency, and stability. How appropriate.

CHIEF JUSTICE: 1977-1992

Then in 1977, a Maine governor did what no governor had done since the state's first governor in 1822: he nominated an attorney, and not a sitting judge, to be Chief Justice of Maine. Despite a salary of \$27,600—the lowest in the country—Vincent accepted the nomination. 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." Indeed, Vincent was unanimously confirmed just 38 days after his nomination was posted. Harvard's Paul Freund later wrote that Vincent's appointment was "vindication of the philosophy of personal federalism, of going back to your home community, strengthening it and drawing strength from it."

The Chief began his tenure in the fall of 1977. By the time he retired from the Court in February of 1992, the Chief, who loved statistics, would be pleased to have you know that he sat on approximately 4,000 cases; wrote about 750 opinions; and averaged 52.9 opinions per year, all of which spanned 151 volumes of the *Atlantic Reporter, Second Series*. Only 10 of the Chief's opinions were dissents, a tribute to the effectiveness of his quiet leadership style among the 17 associate justices who sat in the Court's other six seats during his tenure.

The Chief also brought significant improvements to the structure and operation of all Maine courts. For example, despite a 60 percent increase in filings since 1977, the annual number of cases decided and opinions written more than doubled, and the average time from filing to decision decreased by 20 percent. Nationally, he served as President of the Conference of Chief Justices, making him “Chief of the Chiefs.” Internationally, he served on a U.S. State Department Advisory Committee, leading delegations to China and the former Soviet Union.

As his successor would note, the Chief “was absolutely tireless. You wouldn’t want to go skiing with him because he would want to dictate ‘mem decs’ on the chairlift.” 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.”

Dan Wathen, who succeeded Vincent, did initiate his own changes. But one thing did not change, and this was readily apparent when Dan drove to his first bench and bar conference as chief justice. While en route, Dan’s wife, Judy, asked, “Is the Chief going to be there?” Dan said, “What do you mean, Judy, I *am* the chief.” Judy replied, “No, I mean the *real* Chief.”

RETURN TO PRACTICE: 1992–2013

Vincent retired from the Court, but not from the law, in February of 1992. 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.”

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. He served as a special master for the Massachusetts Supreme Court in the liquidation of a large insurance company. He presided over arbitrations and mediations from Washington to San Francisco and joined a State Department delegation to the Republic of Georgia. He helped at home, too, 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.

During this same time, President George H. W. Bush appointed him to help administer the estate of Oliver Wendell Holmes, and the Chief also held leadership positions in the American Philosophical Society, American Arbitration Association, and Supreme Court Historical Society. In 2006, among all of these activities, the Chief said he appreciated that others still find use for his “antiquity.”

AMERICAN PHILOSOPHICAL SOCIETY AND AMERICAN LAW INSTITUTE

Vincent had a particular affinity for the American Philosophical Society (APS) and The American Law Institute (ALI). At the APS, Vincent was elected a member in 1986, served on the Council from 1990–96 and 1997–2002, was a formative chair of the Class 5 Committee on Membership from 1998–2002, and was vice president from 2002–2005. At the ALI, the Chief was elected a member in 1961 and was elected to Council in 1968. During his four decades on Council, he served as an adviser on projects as diverse as Products Liability, Federal Securities, and the Federal Judicial Code. In 1992, ALI President Rod Perkins wrote that “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. [Two] of its elements are: (1) total, riveted attention . . . ; and (2) an erect physical posture (as if clarity of thought is surely in direct proportion to the precision of spine alignment)”

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 15 years ago. As the colleague jumped in to discuss at length and in detail the topics of the day, he was met with a very uncharacteristic non-response, and he immediately feared that the Chief’s stellar acuity was now finally failing. The colleague was much relieved, if not somewhat embarrassed, when this reply finally came: “You must have me confused with my twin brother, Vincent.” Even well into their 80s, and even when in the company of close associates, the McKusick twins still retained their identical appearance.

In 2008, Vincent’s twin, Victor, passed away at the age of 86. Remarkably, Victor’s life was no less accomplished. Victor was a physician, a geneticist, and a pioneer in gene-mapping research. He was also his own chief: Chief of Medicine at Johns Hopkins Hospital. He authored and co-authored 22 medical studies and 12 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. Victor was also a member of the APS.

In addition to Victor, the Chief is predeceased by his siblings, Harry, Robert, and Grace. He is survived by his wife of 63 years, Nancy; their four children, Barbara, Jim, Kay, and Anne; their 10 grandchildren; and their four great-grandchildren.

CONCLUSION

The engineer in Vincent McKusick required him to know exactly how things work, and the lawyer in Vincent McKusick enabled him to explain that knowledge with care and reason. The Chief never forgot where he came from. He was a Lion. A gift to Maine, and a gift to the nation.

In an interview filmed at Victor's gravesite in 2010, Vincent explained how Victor and he had picked out "modest granite stones to sit side-by-side in the McKusick family section" of a small Parkman cemetery. After a long contemplative 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."

That time has now come. Time for Vincent to rejoin Victor. Time for the Chief to return to the humble but giving fields of Parkman, Maine.

Elected 1986

DEREK LANGHAUSER

Maine Attorney

Author's Note

This tribute was adapted from remarks for the Council of the American Law Institute and published, with annotations, in *The Journal of Appellate Practice and Process* 15, no. 2 (2014): 147. The author is a Maine practitioner who knew the Chief for more than 27 years, through the author's work as law clerk to two justices on the Chief's court; Chief Counsel to the Governor of Maine working on judicial vacancies, budgets, and legislation; an advocate before the Chief's Court; Chair of Maine Court and Governmental Facilities Authority financing courthouse improvements; special counsel to a U.S. Senator researching what it meant to be "qualified" to be Chief Justice of the United States; and, finally, when the author took the Chief's "Maine Seat," as the Chief liked to call it, on the Council of the ALI. The Chief held that seat for 40 years, nearly as long as the author—then age 46—had been alive. This piece is written as a personal appreciation.