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## Edward Settle Godfrey III Associate Justice, Maine Supreme Judicial Court August 18, 1976 - September 1, 1983

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EDWARD SETTLE GODFREY III  
ASSOCIATE JUSTICE,  
MAINE SUPREME JUDICIAL COURT  
AUGUST 18, 1976 - SEPTEMBER 1, 1983

*Vincent L. McKusick\**

“Ed Godfrey,” or simply “Ed” or “Uncle Ed,” is what his wide circle of friends call him, all out of respect and affection, and some additionally out of despair of choosing from among his catalogue of possible titles—Dean or Professor, Justice or Judge. Coming to the Maine Supreme Judicial Court a month after his sixty-third birthday, he was barred by our then *de facto* retirement age of seventy-one from serving more than a single seven-year term.<sup>1</sup> Even so, his one term put Ed Godfrey into a special place in the 175-year history of the Law Court.

He was the first career academic appointed to the court; and, except for Justice Harry P. Glassman, whose term of service was tragically foreshortened, he remains the only career academic among the 101 individuals selected to serve on Maine’s highest court. And the term “career academic” fails to capture fully Ed’s experience in academe; he came to the court not only as a skilled law teacher, but also as an educational administrator of proven accomplishment.

In addition, Ed Godfrey holds a special place in Maine Supreme Judicial Court history as the bridge between the Dufresne Court of the early seventies and the Wathen Court of today. Ed came to the court when it still had only six members. The Chief Justice, Armand A. Dufresne, Jr., had joined as an Associate Justice in 1965 and had succeeded Chief Justice Williamson in 1970. Ed’s other four new colleagues (Justices Charles Pomeroy, Sidney Wernick, James Archibald, and Thomas Delahanty) had been appointed between 1969 and 1973. All but one of Ed’s five original colleagues retired before he was even halfway through his seven-year term, and the fifth retired in 1981, leaving Ed Godfrey the senior Associate Justice after only five years on the court. Two of the replacements for the Dufresne Court (Justices David Roberts<sup>2</sup> and Daniel Wathen<sup>3</sup>) continue to serve on the court today. In addition to Justices Roberts

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\* Former Chief Justice, Maine Supreme Judicial Court; now Of Counsel, Pierce, Atwood, Scribner, Allen, Smith & Lancaster; B.A., Bates College; S.B. and S.M., Massachusetts Institute of Technology; LL.B., Harvard Law School.

1. Until December 1, 1984, Maine had a pay-as-you-go retirement compensation system pursuant to which a judge who failed to retire before reaching the age of 71 forfeited any retirement compensation. See ME. REV. STAT. ANN. tit. 4, § 103 (West 1989), *repealed* by P.L. 1983, ch. 853, § C,8 (effective Dec. 1, 1984).

2. First sworn in as Associate Justice on January 11, 1980.

3. First sworn in as Associate Justice on August 31, 1981.

and Wathen, five others of us<sup>4</sup> had the privilege and educational profit of serving with Ed Godfrey, so that seven of us collectively carried forward through the eighties his example of collegiality and scholarship. In an institution such as the Maine Supreme Judicial Court, to which alone among the three Great Branches the 1820 Maine Constitution gave perpetual existence, the justices' overlapping terms of office provide a built-in means of preserving the court's traditions and for providing at the same time healthy leavening through the fresh ideas and energies of new appointees. Ed Godfrey came to the judiciary at a critical time of unusually fast turnover in the court's membership—he sat with twelve different justices in the short span of seven years. Fortunately, Ed also brought to his “bridge” function an undistracted commitment to the life and work of the court, a natural bent for collegiality and group decision-making, and a balanced approach to precedent and law reform. The court was fortunate to have Ed Godfrey there at the right time to provide continuity with the past while moving with his colleagues into the future.

Ed Godfrey was also the first member of the court to come from “away,” in the sense of having had his upbringing, schooling, and a major part of his legal career completely outside the State of Maine. He was born in Phoenix, Arizona, where his lifelong interest in the West was inherited from both his grandfather, Brigadier General Edward Settle Godfrey of Indian campaigns note, and from his mother and her forebears in Arizona Territory. But Ed spent most of his youth in Albany, New York, where his father, a medical doctor, headed the State Public Health Department. After graduating from Harvard, Ed taught English for two years back at Albany Academy, an alma mater he shared with Learned Hand and Herman Melville—not a bad tradition to emulate in his future writing as an appellate judge! A 1939 graduate of Columbia Law School, his career for the next nine years took him to federal and state government practice in Washington and Albany, to five years of World War II Army service, going from infantry basic training to the rank of major, and to a two-year stint in private practice with an Albany law firm. In 1948 he commenced his teaching at Albany Law School. For the next thirteen years, that well-respected institution was, except for his year of graduate study at Harvard in 1957-58, the venue of his teaching and his extracurricular law-related activities, including work with the New York Law Revision Commission and the National Conference of Bar Examiners. In 1962 he was persuaded to come to Portland to lead the re-creation of the University of Maine School of Law. The rest is Maine history. Over the years our Maine

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4. In order of appointment, David A. Nichols (the first to occupy the court's seventh seat, 1977), Vincent L. McKusick (1977), Harry P. Glassman (1979), Gene Carter (1981), and Elmer H. Violette (1981).

Law School has made many valuable contributions to the work of the Supreme Judicial Court, but surely the first and foremost is its attraction to Maine of Ed Godfrey.<sup>5</sup> His life experiences for nearly fifty years before joining forces with us Mainers gave him a different, and perhaps broader, perspective than the rest of us, which was valuable later in his service on a multi-judge appellate court.

Ed Godfrey's performance on the Supreme Judicial Court reflected well his life experiences of serving in the Army and on law school faculties and of creating and then administering a state university law school of high quality. By nature and practice Ed is a team player. Any of the team's (i.e., the court's) responsibilities Ed made his own, whether a particular responsibility was the preparation of an Opinion of the Justices or the decision and opinion-writing in a Law Court case, even though assigned to another justice, or the promulgation of rules or the consideration of lawyer or judicial discipline. In his contributions to the court's work, he proved himself true to his credentials both as a legal scholar and as a practical builder and administrator of a significant enterprise.

Ed carried his full load of Law Court work, while at the same time giving his colleagues the great benefit of his substantive and editorial suggestions on their draft opinions. He authored 212 opinions for the court spread through 100 volumes of the *Atlantic Second* (Volumes 365-464). He also published seven dissents, five concurrences, and one part-concurrence/part-dissent. But he never wrote separately merely out of pride for his personal view or for his personal choice of expression. A Godfrey separate opinion appeared only where Ed had failed in a gentle but unmistakable effort to persuade the rest of the court to his view and the contested issue was important enough to justify making the intracourt disagreement public. When this author of two opinions that drew Godfrey solo dissents now rereads what Ed wrote some sixteen years ago, I marvel at the benightedness of all of his Law Court colleagues. I rather think those dissents of his<sup>6</sup> have aged better than my own opinions for the court.

The Law Court's random method of assigning opinion writing resulted, as it was designed to do, in Ed's writing opinions covering the entire subject matter range of the court's work. About 34 percent of the cases in which he wrote were criminal, roughly the same percentage that criminal cases at the time represented in the court's total docket. Some of his opinions were blockbusters in length and

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5. Justice Harry P. Glassman and Justice Caroline D. Glassman also came originally to Maine because of our Law School.

6. See *State v. Hanks*, 397 A.2d 998, 1000 (Me. 1979); *State v. Thibeault*, 390 A.2d 1095, 1103 (Me. 1978).

complexity<sup>7</sup> or in public importance.<sup>8</sup> Others were written in the type of case that makes up much of the Law Court's docket: those cases that are of great importance to the litigants and their attorneys and that require careful application of generally established legal principles to the particular facts, but that do not call for any precedent-setting decisions and do not involve any matter of special public significance. Nonetheless, whatever any one of his cases involved, even if less than earth-shaking, Ed Godfrey always gave it his thorough attention, determined always to get it right, i.e., "right" both in the substantive result and in the opinion explaining the result. It was that drive to "get it right," rather than any conscious judicial philosophy, that I see guiding his appellate work.<sup>9</sup>

Other authors in this issue of the *Review* are analyzing the Godfrey Law Court product in detail, subject area by subject area. Suffice it for me to say that on now reviewing the whole body of Ed Godfrey's published opinions, I find full documentation of a job well done; I find a work product that any appellate judge could look back upon with well justified pride. But Ed's contributions are not represented alone in the 225 opinions West published under his name. Every one of us fortunate enough to sit with Ed were better judges and every one of us produced better work for having him as a colleague. In the historical sweep of this ongoing institution, the Maine Supreme Judicial Court is stronger today and into the future by reason of the fact that Ed Godfrey in his all-too-short term of service helped to enhance and carry forward the court's traditions of integrity and excellence.

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7. *See, e.g.*, *New England Tel. & Tel. Co. v. Public Utilities Commission*, 448 A.2d 272 (Me. 1982).

8. *See, e.g.*, *Common Cause v. State of Maine*, 455 A.2d 1 (Me. 1983).

9. Compare the goal that Justice Ruth Bader Ginsburg later has expressly set for herself to write "opinions that both get it right, and keep it tight, without undue digressions or decorations or distracting denunciations of colleagues who hold different views." R. B. Ginsburg, *Remarks for American Law Institute Annual Dinner* (May 19, 1994), in 38 *ST. LOUIS L.J.* 881, 885 (1994).