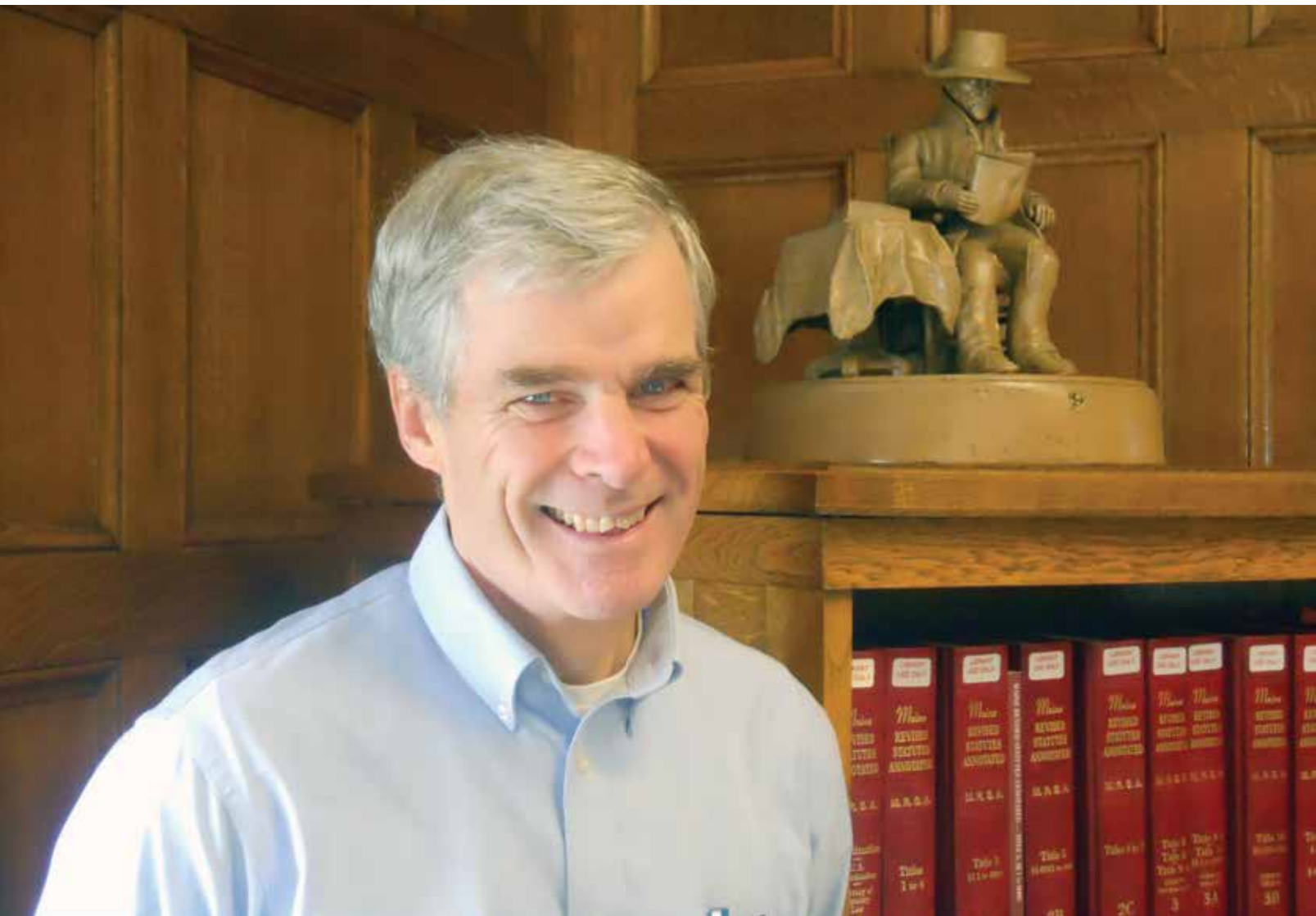


Beyond The Law: James McKenna

Interview and photos
by Daniel J. Murphy

Poetry was once described by the poet Novalis as a balm for wounds inflicted by reason. For lawyer and poet James McKenna of Hallowell, the law – a veritable bastion of reason – is an endless fount of inspiration. As an art form, poetry has long held the power to inspire and move others, transforming deeply personal reflections into shared, universal observations. However, behind its power and mystery, the discipline of poetry also involves the daunting task of assembling, rearranging, and then reducing words to their essential essence. McKenna, who has spent more than 33 years serving in the Office of the Maine Attorney General, has embraced this task and has made it an important part of his life. His latest collection of poems, *The Common Law*, was recently published and is available at www.moonpiepress.com. McKenna sat down with the *Maine Bar Journal* to discuss his interests.



MBJ: Please tell our readers about your interest in writing poetry.

JM: Like any lawyer, I am very interested in words and what makes them effective. Samuel Coleridge, who died in 1834, would have placed poetry a bit above the prose of an excellent legal brief. In fact Coleridge urged others to follow his own “homely definitions of prose and poetry.” He called prose “words in their best order” and poetry “the best words in their best order.”

MBJ: Is writing poetry part of your weekly routine?

JM: Actually, it’s part of my daily routine. If I’m working on a poem, I’m delighted to get up at five in the morning and sit at my desk, fiddling around with the words, trying to get them to match their sense – usually without much success. Samuel Beckett described the task well: “When the sense is sleep, the words go to sleep...”

MBJ: Where do you get your inspiration for writing poems?

JM: When it comes to poetry, lawyers have two advantages. First, we work every day with people who are struggling with difficult and often very interesting problems. Trying to help these people can sometimes result in an idea for a poem. Of course, a lot of people, not just lawyers, have jobs like that. But lawyers have a second advantage: we always have a pad of paper and we’re always taking notes!

MBJ: Do you have any influences for your writing?

JM: I love formal poets – ones who use meter and rhyme – like Thomas Hardy and W.B. Yeats. In my collection *The Common Law* there are a few formal poems, but usually I resort to a style of verse that’s more free. Many of my poems are narratives because I’m seeking

a more natural sound than you hear in formal verse. One modern free-verse poet I greatly enjoy is Tony Hoagland. If you want a real treat, read his poem “Lawrence,” which is a defense of the English writer D.H. Lawrence.

MBJ: What are some of the challenges of writing poetry?

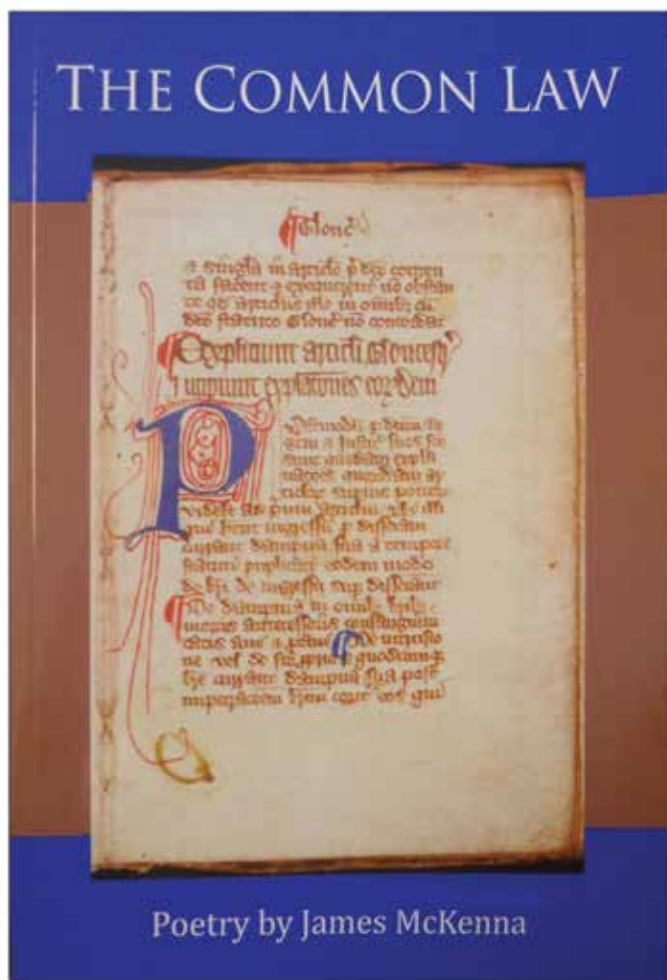
JM: Being concise is important, which means revision is crucial. When lawyers write an argument, we want to make sure we get everything in and do not

are the opposite. A few years ago I was studying poetry at Bennington College and one of my teachers kept imploring me to be more concise. So I took a long poem that I had been working on and, like a jeweler, I cut and cut until it was a diamond-like marvel. When he returned the poem to me he wrote across the top, “I thought this poem would never end!” Of course, just reducing the number of words doesn’t accomplish much.

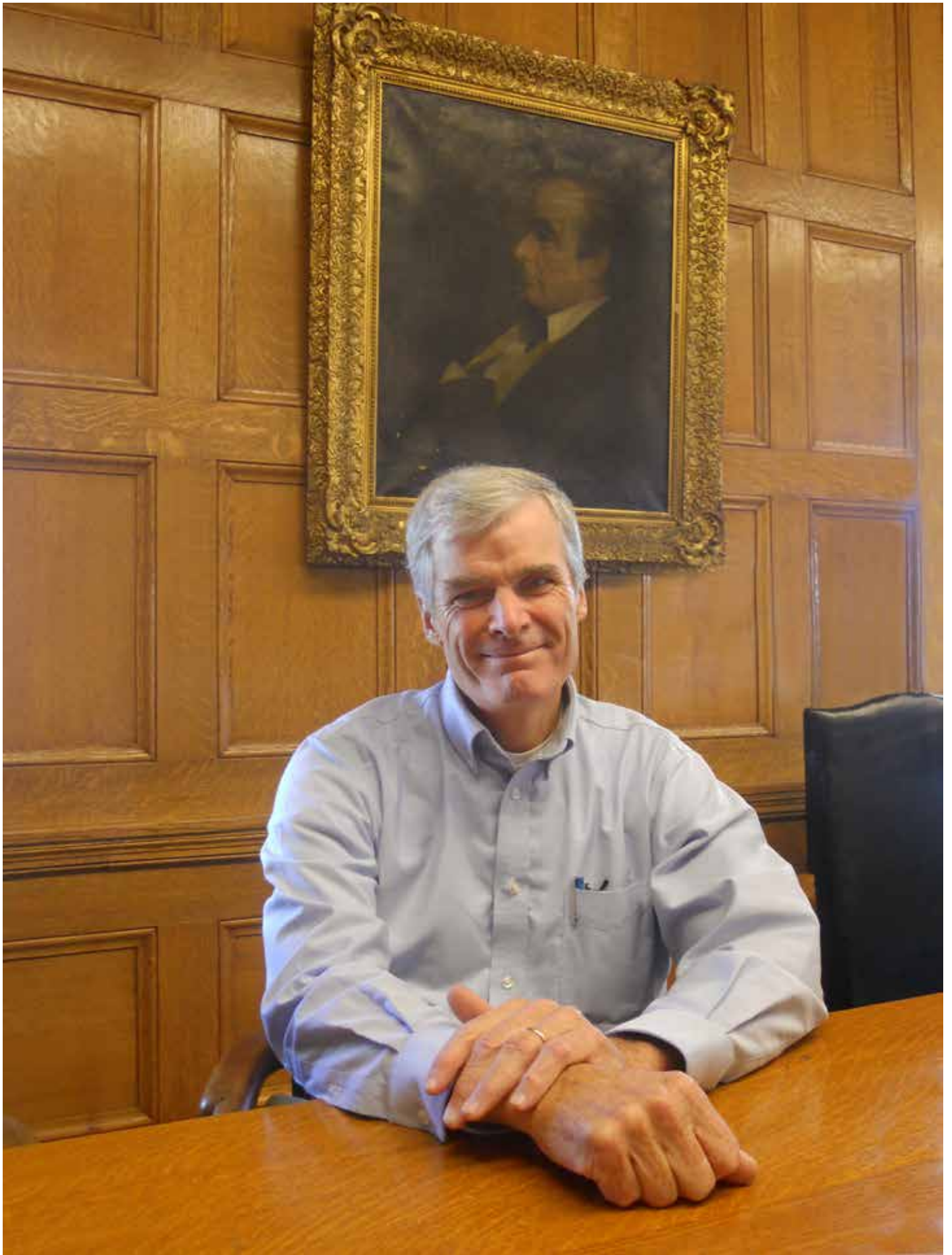
MBJ: What is it about writing poetry that gives you satisfaction?

JM: Of course having people read one of my poems and enjoying it is very satisfying. But given the number of rejection notices I’ve received over the years, that might not be enough to keep me writing. However, just trying to fashion a good poem is wonderful. When I’m working on a poem and it’s going pretty well, I’m quite content with the world. The poet Richard Hugo describes the writing process as follows: first, come up with the idea, a powerful metaphor perhaps. But after that, your allegiance shifts to the sound and rhythm of the words. So, I begin poems with what I hope is an idea that has resonance. For me, that’s not the hardest part. It’s finding the right sound and the rhythm of the words that often stumps me. Imagine a poem is a music box. I’m not too bad at building the box – the idea. But then when I flip the box open the music always needs a lot more work, often

more than I can give it. Still, it’s great fun to try. And, as I said, revision is the key. There’s a famous quote attributed to French novelist Gustav Flaubert on the subject of revision: “I was working on the proof of one of my poems all the morning, and took out a comma. In the afternoon I put it back again.”



leave out something that might be important. Sometimes you need to sacrifice elegance for completeness. That means not leaving behind on your yellow pad an unlikely argument that nonetheless might appeal to the court. The Supreme Court’s unexpected decision in the Affordable Care Act case is an argument for briefs being as complete as possible. However, poems



Three Songs of the Civil Law

Lawyer

My clients' faces in repose
have such somber looks.
They carry their sad burdens like
the heaviest of law books.

Judge

These constant cases of fear or grief,
bad contracts or bad lovers.
So The Law I thank. How else to pick
one party and not the other?

Jury

The lawyers give too many facts,
the judge quotes laws on high.
All we want is a story that's true,
to nod our heads and sigh.

MBJ: Tell me about the background of the poem "Three Songs of the Civil Law."

JM: I think that poem began in Rumford District Court. I did a lot of child support cases for DHHS in that court. One day the parties were all sitting in the same room, waiting for our case to be called. Everyone was quiet and I looked over at the waiting clients. Their faces seemed so quiet and somber, their burdens so heavy. And the judges? In even the simplest case their job is hard. The mother desperately seeks child support. But then the father testifies how little he makes. I believe Judge Learned Hand once said that making a decision is not that hard, when there's only one principle involved. I'm sure judges are quite thankful for the child support statutory guidelines. And juries, we're all taught, like a good story.

Damage Enhancement

What a client!
No to compromise.
No to mediation.
No to everything.
I tell her she's
making me into a crook,
like that auto shop guy
arrested last week.
He'd sledge hammer your
slightly battered car,
helping you scam insurance.
It's called "damage enhancement."
Now she wants me
to crumple her husband,
who's also only slightly battered.
"Why crumple him?" I ask her.
"You know there's no insurance.
You never paid the premiums."

MBJ: Tell us about your inspiration for the poem "Damage Enhancement."

JM: Lawyers sometimes have clients who are out to get the other side no matter what. This poem began with an article about the insurance scam of damage enhancement. I thought, "What a phrase!" I wrote it down. Eventually the phrase evolved into a poem about a husband and wife in litigation.

Pro Bono Client

Old, perhaps crazed, but for no reason
kicked out. So I went to court.

The landlord argued only Common Law:
"The old man is a Tenant at Sufferance. Nothing but.
He held only 'naked possession.' No rights at all."

But before I could rise he was on his feet,
voice hoarse: "Your Honor, we are all Tenants
at Sufferance. The house is our body. God
Himself the Landlord." And the judge let him stay.

MBJ: Tell us about your poem "Pro Bono Client."

JM: First of all, it's in praise of lawyers who take *pro bono* cases. It's something state attorneys can't do. And it's also about property law and the long history of the common law. For hundreds of years landlords always held the legal cards and tenants always held the losing cards. Although Title 14 has redressed that somewhat, evictions today can still be very harsh.

MBJ: What's the best advice you've received?

JM: Here's good advice for practicing in District Court: "Be kind, for everyone you meet is fighting a great battle." While the quote, which exists in various forms, is attributed to both Plato and the Scottish writer and theologian Ian MacLaren, the sentiment is the same. Watching child protection cases – the local bar, the judges, the DHHS caseworkers – you can only be filled with admiration. In the final analysis everyone is kind with each other. And everyone is indeed fighting a great battle.



Daniel J. Murphy is a shareholder in Bernstein Shur's Litigation Practice Group, where his practice concentrates on commercial and business litigation matters.

Beyond the Law features conversations with Maine lawyers who pursue unique interests or pastimes. Readers are invited to suggest candidates for *Beyond the Law* by contacting Dan Murphy at dmurphy@bernsteinshur.com.