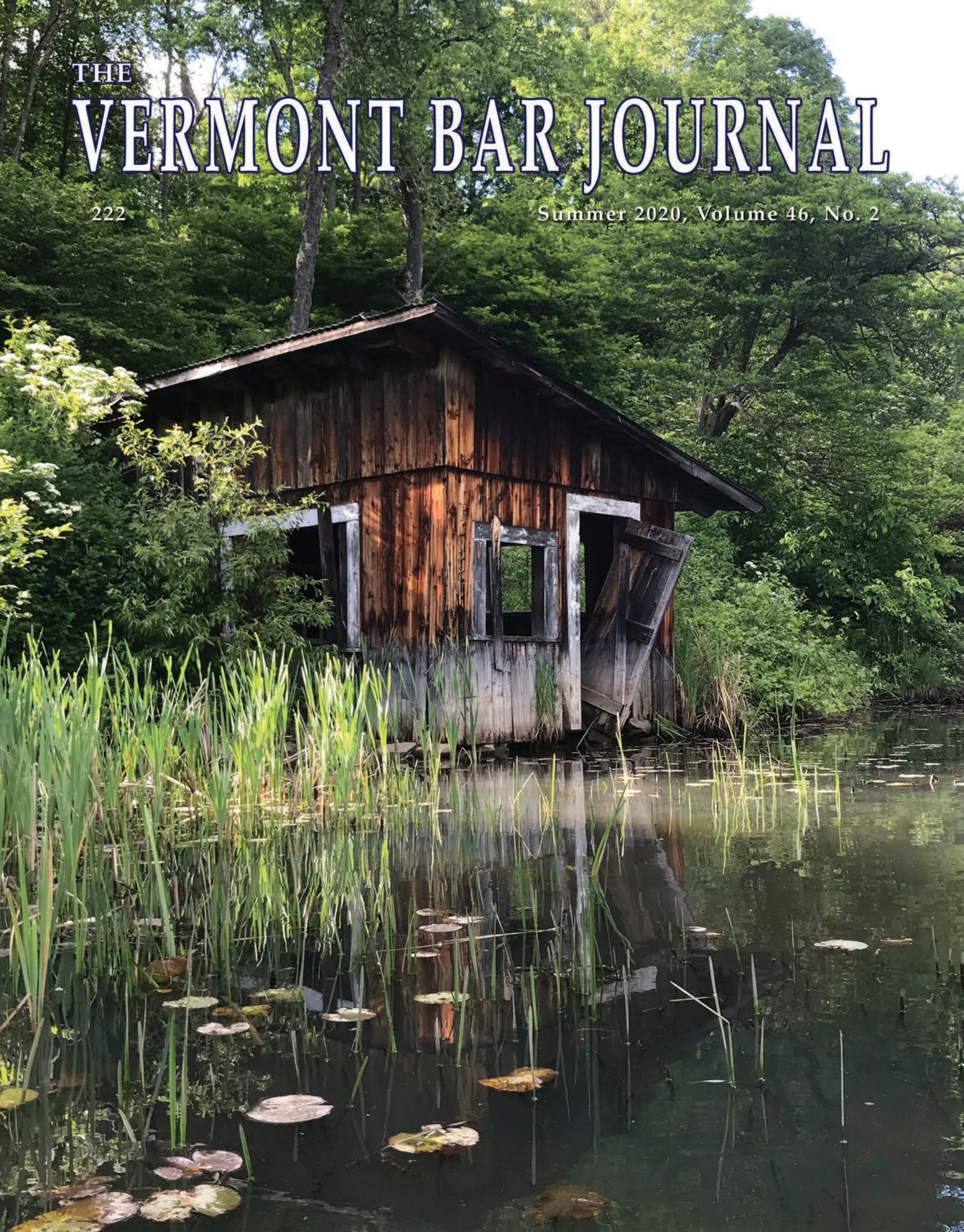


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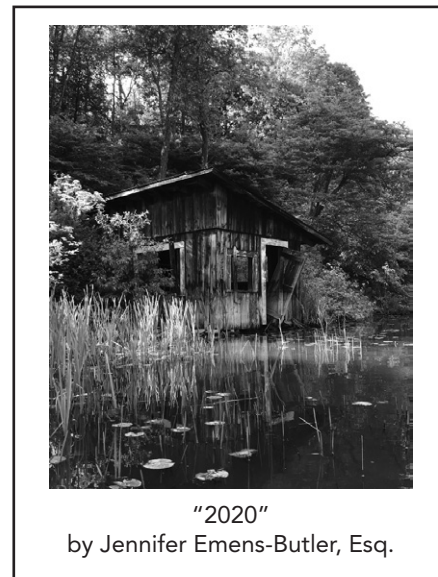
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The Vermont Bar Association
35-37 Court St, PO Box 100
Montpelier, Vermont 05601-0100
802-223-2020 • 1-800-639-7036
Fax: 802-223-1573
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On the Web: www.vtbar.org

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PRESIDENT'S COLUMN

As I write my last column, we are facing a unique moment in history. George Floyd's death sparked a response from Americans all over this country but mostly it was a white awakening. People of color have been living with this reality on a daily basis.

Our country's history with slavery began in 1619 and did not end until "Juneteenth" in 1865. Following the end of slavery and even during reconstruction, people of color continued to experience oppression, discrimination and bias. For years, America upheld or tolerated systemic discrimination, bias and its symbols. We honor confederate heroes with monuments or by displaying their names on public infrastructure. We honor the confederacy by flying its battle flag over state capitols and in the public realm. We did not consider, or dismissed, the significant trauma perpetrated on people of color by subjecting them to these symbols. We did not work hard enough to change a system that favors white people over people of color. The bitter irony of our national tolerance for Jim Crow laws and our embrace of traitors and slave owners, pales in comparison to the original intent in preserving the system and symbols after slavery ended. The preservation was a message to black Americans about who really runs this place we call America. We erected a metaphoric monument emblazoned with this warning: Slavery is ended but you will be oppressed, terrorized, discriminated against, brutalized and killed for years to come.

In the aftermath of "Bloody Sunday" on the Edmund Pettus Bridge in Selma, Alabama (1965 Montgomery to Selma Civil Rights March), Americans cried "enough is enough" and the will of the country focused on ending racial injustice through passage of the Voting Rights Act of 1965. And yet, racial injustice continued. The bridge upon which marchers were brutalized still bears the name of Edmund Pettus: Confederate General and Grand Dragon of the KKK. I am reminded of the country's mood in 1965 when I watch America rise up in outrage over the brutal killing of Mr. Floyd and the sheer inhumanity his death represents. Will this mood pass as we get distracted and pulled into our daily routines? Are we releasing our outrage by calling out racial injustice or are we unleashing a sustained commitment to an effective campaign to end systemic racism?

Our collective discomfort is fully on display. And, frankly I welcome it. We should be uncomfortable. I just hope we do not rush for quick political solutions that make

us feel better about ourselves, but do not effectuate broad change. We need to lean in and leverage this tension; let our anguish focus us on how to end the festering wound of racism.

How do we begin?

- Most anti-racist literature recommends that we first listen and learn. The ABA issued the 21 day challenge that I highly recommend you consider as you think about what it means to be anti-racist: https://www.americanbar.org/groups/labor_law/membership/equal_opportunity/
- You might also consider reading the New York Times 1619 Project: <https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html>
- The VBA Board of Managers will consider what anti-racism efforts the VBA should undertake during its next board meeting. I also encourage each of you to consider what it means to be anti-racist. VBA Health Law Co-Chair Elizabeth Wohl provided a simple but helpful reflective practice list created by Dr. Liza A. Talusan, PhD.: <http://www.lizatalusan.com/to-loosen-the-mind/2020/6/28/its-time-to-shift-from-bad-behaviors-to-real-change>
- Several weeks ago, I asked Alycia Sanders, chair of the VBA Diversity Section, to partner with the VBA Criminal Law Section, in addressing bias in Vermont's criminal justice system. My request begins with a project educating jurors on implicit bias at orientation. Specifically, to create content and follow up with possible revisions to jury instructions aimed at raising juror awareness around implicit bias. I encouraged broadening this project by including other VBA sections and exploring how to address bias in all aspects of our court system. I also asked the Diversity Section to populate our VBA website with resources on bias, discrimination and anti-racism. I am pleased to report that your County Bar Presidents and VBA Section and Division Chairs expressed support and interest in joining this project.
- I extend to each of you the VBA challenge: Scour your practice areas and look for the rules, statutes and practices that disparately impact people of color or other marginalized individuals. Create recommendations or action lists for your section, division, county bar and VBA to consider.
- Scour your community for the symbols of



racism and systems that preserve it. And then take action.

- Volunteer for and donate to racial justice organizations.
- Visit the VBA resource page on racism and implicit bias and attend our CLEs on this topic.
- Recognize that we all have bias and explore that bias. In becoming aware of our own bias, we are better able to avoid acting on that bias and participating in unintentional microaggressions. Workshops and online tests are helpful in this exploration. Here is a link to one online bias test: <https://implicit.harvard.edu/implicit/>
- And, if you want to change the name of the Edmund Pettus bridge, you might consider signing a petition calling for it to be renamed the John Lewis bridge. Congressman John Lewis still bears the scar of the skull fracture inflicted by Alabama State Troopers while he led peaceful marchers across the Pettus bridge on Bloody Sunday. Here is the link to the petition: <https://www.change.org/p/governor-of-alabama-rename-the-edmund-pettus-bridge-after-rep-john-lewis?signed=true>

Much of what I planned to do during my Presidency on behalf of the VBA, our membership and our profession was sidelined by the pandemic. And as a result of the public health emergency I needed to refocus our priorities so I called an audible and changed the play. But I have not forgotten my goals. Here is an update:

- VBA Civics Awards were created by the Board. One will be awarded to a Teacher and the other to a Student based upon



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a civics project. Based upon teacher input in March, it was decided to postpone these awards until schools return to in-person education. The awards are named for Moses Robinson and Marion Milne. Both Vermonters exemplified civics. Moses Robinson is responsible for the founding of Vermont and its institutions. In addition to being a state-founder, Moses Robinson was Vermont's first Supreme Court Justice, a governor and senator. Marion Milne was a well-regarded business woman, member of many community organizations, commissioner for the Vermont Women's Commission, and republican Vermont legislator. In 2000, Rep. Milne voted in support of Civil Unions knowing she would lose the seat and her political career: "I cast this vote because it is the right thing to do. . . I will not be silenced by hatred and intolerance, and if I am measured by this one vote in my entire public life, I will have served the best interest of the people of Vermont by casting it." Following that vote, Rep. Milne lost her seat and her promising political career.

- VBA Lawyers in Schools: Guest Instructional Project. Jonathan Teller-Elsberg, recent graduate of Vermont Law School, created specific guidance and a few lesson plans for lawyers interested volunteering for classroom instruction. We will meet with the Vermont Alliance for Social

Studies to obtain feedback on Jonathan's work and hopefully co-create a program.

- Community Panel Discussions on Vermont Constitutional Amendments. We had to postpone our panel discussion set for April. Whether we can resume these community forums depends upon the resolution of this pandemic.

This is my last article before the end of my term in October 2020. I strived to serve you well and hope you are satisfied with my tenure as your VBA president. I am deeply grateful to the VBA staff (Jennifer, Mary, Michelle, Lisa, Laura and Becky) and especially our Executive Director Teri Corsones. They all have worked extra hard to ensure our members were well served during this pandemic. Every day they bring their "A game" but during this pandemic they gave above and beyond to make sure the VBA is working for our members.

Thank you to Chief Justice Reiber, the COVID-19 Committee members, the E-Filing Committee members, the chairs of the VBA Sections and Divisions and our County Bar Presidents. I relied on their leadership, willingness to serve our profession and their wise guidance. We are all better off for their contributions.

Thank you for giving me the opportunity to serve as VBA president. It has been an honor and privilege to serve.



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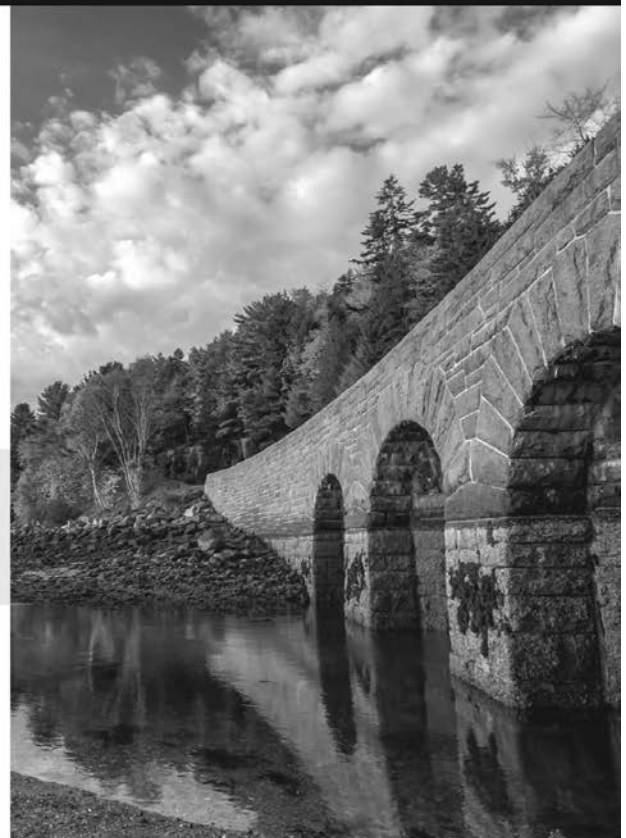


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PURSUIITS OF HAPPINESS

Curling: Complicated, Cold Camaraderie

JEB: So I'm here today speaking with Kate Thomas via telephone who was nominated by Mike Kennedy for this edition of Pursuits of Happiness. As you know, Kate, we interview people who have interests or talents (or both) outside of the practice of law that keep them going. And your outside interest struck me as fascinating, so I was very excited that you got nominated. I guess we should start at the very beginning. Were you born with a curling rock in your hand?

MKT: No, I started curling when I lived in Rutland. I was spending time with two good friends who were close neighbors and I noticed one winter, they just weren't ever around, especially on the weekends. I asked, why don't I ever get to see you anymore? And they said, oh, we've been curling. You should try it.

JEB: So you did?

MKT: Well, I'm not a sports person generally speaking. I was a band and drama geek in high school and I never played any organized sports. So I was very skeptical.

JEB: Maybe we should back up a bit from there, I know you went to VLS but did you grow up in Rutland?

MKT: No, I attended law school a bit later in life. I was 37 when I graduated from VLS so I've been practicing seven years this year. I grew up in Avon Lake, Ohio, which is west of Cleveland. I moved to Vermont when I was 24 to work at Spring Lake Ranch, which is over in Cuttingsville and is a place for people with mental illness and addictive illness. I had one year of college under my belt, but finances were tight and I was wondering what I was going to be doing long term. And I was thinking I'll travel around a bit, and I'll get some experience, thinking maybe psychology or social work could be a good fit. Working at the Ranch was a way to try it without having to go to school and pay for school. I have a good college friend who really liked it at the Ranch so I applied for a job there and I got it. I figured I would be here for like a year.

JEB: I've heard that one before!

MKT: Yes! I have a friend who says: welcome to Rutland. It's not a rut. It's a really deep groove.

JEB: Yes, you can't leave Vermont once you come here, right?

MKT: I don't know why anyone would want to. Right.

JEB: So back to curling. You are in Ver-



mont and you were asked to try curling out, despite never having participated in a sport.

MKT: It's a sport and one of the reasons why I never wanted to participate in sports is that I'm from Ohio. It might be different in other places, but sports in Ohio, especially like football and basketball, are so ultra-competitive and people are so nuts about them. I was in marching band, that seemed like enough.

JEB: Yes, I get that. I'm from Ohio and never played sports through high school, but I felt like they dominated everything.

MKT: So I was thinking to myself, why would you do that? Especially now that I'm an attorney in Vermont, and most attorneys are really great here, but...

JEB: But if you're going to fight for a living why do it in your spare time?

MKT: Exactly. But I found out that curling as a sport is very different. It attracts so many nice people from different walks of life.

JEB: So when they first invited you, did you know what they were talking about?

MKT: I mean I'd seen it on TV during the Olympics, but I thought you had to skate to curl, because it's played on ice, but you don't. And my friends said no, you just wear shoes. Still, that sounded to me like falling on the ice a bunch of times.

JEB: Yes, you'd think being on shoes without skates would be even more slippery!

MKT: Oh yeah, totally. Most people do fall at least once during delivery in the beginning, when they are getting used to their sliders. But for curling we pebble the ice, so it's got more traction than you think. And the special shoes or overshoes have grippers. But a lot of people just start out in their sneakers.

JEB: So here is our first curling term.

'Pebble' the ice? Like just where people walk around or the whole surface of the ice, where you play too?

MKT: Everywhere. There's this whole process of getting the ice ready to curl on it. And the biggest step is to spray the ice down with these fine droplets of water, which then freeze onto the surface of the ice into little pebbles. We curl at Giorgetti Arena in Rutland, so we share the ice with hockey and figure skating. They smooth the ice out with a Zamboni after the hockey players leave. And then we pebble it by spraying and then use curling stones to shave down the round part of each little pebble so that they don't slow down the rocks. Then everything is swept with a big broom.

JEB: I was just wondering if the brooming is getting rid of the little pebbles, to smooth it out where you're going to go?

MKT: Well not those brooms. The big sweeper broom is probably like six feet long and that's the one I'm talking about for the ice prep. Then there is sweeping during curling play, but that's different. You want the pebbles to remain.

JEB: So they say, why don't you come with us? You've never done it but since you don't have to skate and you wear shoes to walk on little pebbles on ice, you just walked right out there?

MKT: Well, you have to go to a 'learn to curl' course first. In order to even join a club, you have to do a learn to curl, as they're really serious about safety. They teach you how to deliver the stone, the basic rules, how to sweep the stone, basic etiquette, and they give you an introduction as to how scoring works. But that's one thing that gets a lot of people confused, and you honestly don't need to know all the rules in order to start curling.

JEB: Just aim for the circles?

MKT: Well a bit more than that. The field of play is called 'the sheet' and at the end of the sheet, there's that big target thing, which is called 'the house' and 'the skip' of the team directs traffic down there. And so he or she will hold their broom at the part of the house where they want you to aim your stone. So you get into 'the hack' which is the foot-hold you use to start to deliver your stone. And you position your body so that it's aimed towards where the skip is pointing with their broom.

JEB: So that's why people are all stretched out at an angle and sliding—it looks so cool.

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MKT: Yes, the hack gives you something to push off of and then on your other foot you're wearing a silicone slider that slides you over the ice so that is why they slide so far. But I don't deliver that way. I deliver with a stick because I have arthritis in my knees.

JEB: It does look like an awkward pose to get into and keep.

MKT: Yes, it's a deep lunge and your hips have to be really flexible and your knees stable to do it perfectly. Although I will say, you see all different people of all different ages and abilities doing this sport. You could walk out and use your stick that reaches down to the handle of the stone, using that to push the stone instead of your hand. So it's very accessible—there are wheelchair curlers as well.

JEB: Does everybody do both parts, like delivering and sweeping?

MKT: Not everybody. The only one who doesn't do both is the skip because they're down at the house directing traffic until they deliver their two stones. But yes, everybody else on the team does sweeping and delivering, although I think there are modifications for wheelchair curling.

JEB: Okay. Now the sweeping thing. I've watched the frantic sweeping on TV, but does it really do much? I mean isn't it all about the delivery? Or does the sweeping get rid of the pebbles and make it go?

MKT: Well the pebbles are actually what makes the stone move along the ice. It's very fascinating from a physics perspective. There's a circular bevel on the bottom of this 42-pound granite stone. And that's the only part of the stone that makes contact with the ice. And if you didn't have the pebbles on the ice, the stone wouldn't really move. I was at this 'bonspiel' once...

JEB: Ah, more terminology. Doing my research prior to our call, I think a bonspiel is basically like a tournament, right?

MKT: Yes. So, I was at one once in Rhode Island and they were curling in an inflatable bubble, with all the ice and cooling equipment built into it, but the day before it had been like 65 degrees. We went in and it was just moist in there. It was not good. We tried to curl, but the ice had gotten too warm in there to keep the pebbles, and you couldn't move the stones.

JEB: But I thought the sweeping did just that...melted the ice, slightly, to make it move.

MKT: Well to curl, the ice needs to be frozen and by sweeping you are melting it just slightly. It immediately refreezes. Originally sweeping was to remove any debris that could interfere with the stone. But sweeping can actually influence the direction of the stone. You can keep it straighter than it

would normally go and you can make it go farther than it would normally go by sweeping it.

JEB: But again, it's really all about the delivery. Isn't it?

MKT: You know, the sweepers, the delivery person and the skip all have an influence on it, especially the skip. I mean, if the skip is not reading the ice, or the angle is wrong or there is a groove in the ice—we get all kinds of crazy impediments in arena curling because we share the ice with so many other people and there's going to be flaws in it. But the sweepers definitely make a difference. And sweeping is great from a participant standpoint, because it's actually pretty good cardio. You have to lean way over on your broom and move quickly. And you hustle, you know, your skip is yelling at you too. Every game has eight ends-- it takes about two and a half hours to play a game and you're moving that whole time.

JEB: Two and a half hours? Like if you're at a bonspiel or just one game is two and a half hours?

MKT: Tournaments are timed, but for our league playing out a full eight ends takes about two and a half hours.

JEB: So how many teams would show up in Rutland?

MKT: In Rutland on Sundays last year we had a full house. So we have four sheets in Rutland and there's two teams per sheet-- it was eight teams in our league on Sundays last winter. Thirty-two participants.

JEB: Wow. And this is during hockey season, and it's so hard to get reasonable ice times for hockey and then they have to clean and pebble the ice each time?

MKT: Yes, and as a result, it's also hard for us to get ice time but Rutland Rec has been very good to us.

JEB: When I looked up Vermont curling it seemed like almost everything I saw was played in Canada. Do you play there?

MKT: Yeah, we do. There are a couple of clubs just over the border. Green Mountain Curling Club in Burlington actually does all of their curling in Canada because that's the closest ice that they can get. They really can't get hockey ice apparently there.

JEB: Yes, I have friends who have kids who play hockey in Burlington and even at nine years old they were playing at like 10 at night or 5 in the morning! It seems impossible to get ice time.

MKT: Yes, so Burlington curlers go to Canada where they have lots of dedicated facilities (which is different from arena curling where the ice is multi-use). There are lots of dedicated facilities in the Northeast US as well. Schenectady, New York is a big one for

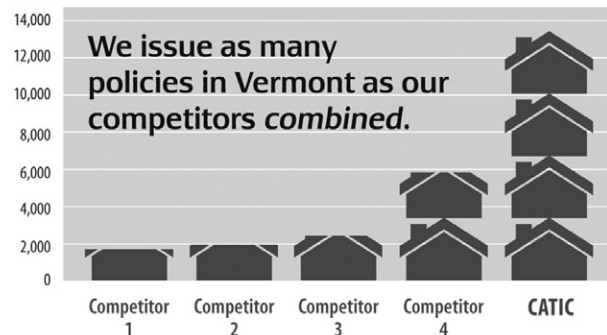
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JEB: There is a distinction between arena curling and dedicated ice curling?

MKT: Yes, arena curling is a much different experience from dedicated ice curling because you have to deal with whatever the ice is doing on that particular night in an arena, whereas on flat dedicated ice, you are going to have perfect conditions every single time. And it produces two different kinds of curlers really. Arena curlers are generally speaking less technically precise. We don't get a lot of ice time because we share the ice with other sports, so we do not really get to practice much. And our strategy is impacted because you just don't know what this stone is going to do, because of the varying ice conditions.

But this also makes us more flexible. When you have a good skip, after four stones, they know what the ice is doing and are thinking about how to use that to our advantage. So it adds a layer of strategy for the skip that is very interesting. And then it's really interesting when an arena team gets enough experience on dedicated ice, where they become technically better, they can deal with any imperfections on the ice and they can hit their shots. That's when there can be a pretty major upset at a bonspiel against a dedicated ice team.

JEB: That makes sense. It's like what they say about Vermont producing good ski racers and skiers because we ski on rocks and horrible conditions and unlike people who are out West and always have perfect snow, we know how to adapt better.

So obviously you are hooked and enjoy it so much. How long have you been doing it then?

MKT: This year was my third full season. I started in 2016 but I wasn't completely sold on it and then I was convinced to come back the next year and give it a real try.

JEB: You sound so passionate about it, but you weren't hooked right away?

MKT: Well that first season, I fell and had to be out for a few weeks. So I was a little trepidatious about getting back in there.

JEB: Oh no! Was it trying to deliver the stone?

MKT: No, it was a user error. I stepped on my own shoelace and went right down! But I was convinced to try again.

JEB: Wow. They must be super convincing or really great friends!

MKT: They are really great friends. I really do love it now. Curling is a social sport. And it's more than just curling --you are often traveling over the weekend with people with whom you become steady friends. So I have no interest in stopping curling any time

soon. I am actually on the board of directors of Rutland Rocks Curling Club and I serve as treasurer.

JEB: So are you devoted to growing the club and the sport?

MKT: Yes. It would be great if we could get a dedicated facility somewhere in Vermont, and I know I am biased but I think Rutland is the perfect place. We have people who travel up to one and a half hours one way from any direction to curl in Rutland right now. We get people from Middlebury, Manchester, and from the Upper Valley Curling Club in the Woodstock area. We're a reasonable distance from Schenectady, who would come over and curl with us as we do them. I feel like Rutland is actually a really good central location for dedicated ice.

JEB: I recall Middlebury or UVM was selling one of those bubbles, their soccer bubble, so you'd just need a Zamboni and some cooling equipment?

MKT: Well, a real curling club is more a combination restaurant and bar so you can just come out, get some pizza and beer or whatever and watch some curling and hang out. And as far as the bubble goes, after my experience in Rhode Island...

JEB: Yeah, we've had some 65-degree days in the winter here for sure the last few years! Oh, speaking of beer, I forgot to ask if this was strictly for adults or for kids too?

MKT: It is absolutely for kids too. Our board just voted to buy a set of junior stones from a vendor in Canada that sells them gently used. I want to say at least two years, maybe even three now, Rutland Recreation Department has hosted an event during February school break called Winterfest, where Rutland Rocks Curling Club has facilitated a learn to curl event for kids who are on vacation that week. The first time we did it, hundreds of people showed up, and as of right now we have over a hundred families that said that they would be interested in continuing. And that's how you build a club. You know, you start people when they're young and teach them the fundamentals and it really can be a lifelong sport. It's a great team sport for all abilities where the emphasis is on camaraderie and support. It's traditional to compliment your opponents' good shots and to shake hands before and after every game.

JEB: And it seems very accessible. I mean you have a set of stones but then everybody uses the so it's not a huge investment on an individual level.

MKT: Correct, I mean if you really want to have your own broom, you can buy it. I think the shoes are actually a good thing to get but they're only like 80 bucks or less and they have the slider built in and a gripper that you put on over the slider so that



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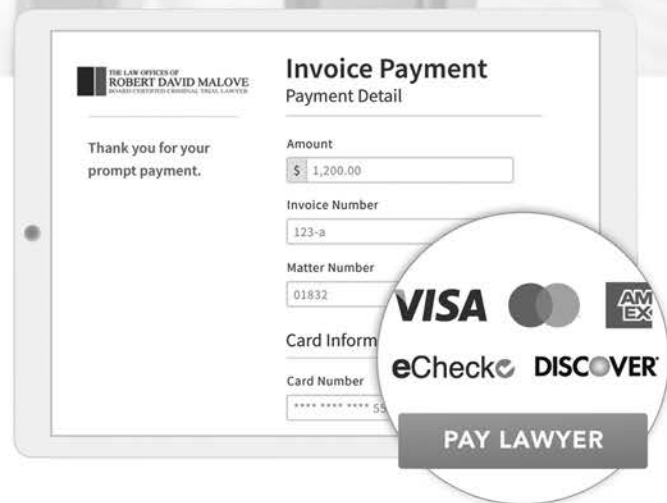
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you can still walk around normally. And maybe you get your own lighter broom or a hat with a pad in it like mine in case you fall and hit your head. But the stones are shared and there's not too much other investment. I'll be really excited when we can pick up that set of junior stones for our club in Rutland.

JEB: So I know you commuted from Rutland to VLS when you were in school (a crazy commute I've done myself) and you were in Rutland when you were in the VBA Incubator program practicing, but I see you just changed firms. Congratulations are in order, but the first question is whether you are going to commute to Burlington.

MKT: Nope. I'm actually moving to Burlington. I met someone, who was willing to move, but he looked around for a few months for a job in Rutland and no luck. So I looked in Burlington and I landed in a good spot.

JEB: Yes. It is a great firm! But I don't see that you will be practicing in the area of what I assume was your favorite course in law school!

MKT: My favorite? That's hard to say. I always wanted to do bankruptcy.

JEB: Ah ha! I was fishing for it!

MKT: [laughs] Oh yes, I felt like I could be good at that, but over the past few years there just haven't been that many bankruptcy filings. I'm getting into education law now, which is a big new area for me. I'm going to focus on that and continue doing family law. My juvenile docket experience and my time on the Rutland City school board actually lends well to the education law work.

JEB: So now will you join a club near Burlington?

MKT: I will keep curling in Rutland. I'm invested in the Rutland Rocks Curling Club and I have a lot of friends here that I want to keep up with. I'll come on Sundays and spend the night and then hop in the car on Monday mornings.

JEB: That won't be too much? Or is it so peaceful, I mean I know the sweeping is furi-

ous, but just watching the stone glide looks peaceful? Do you find it to be a peaceful respite for a weekend off work?

MKT: Peaceful? Well, there's a lot of yelling and vigorous activity! But it's very focusing. It makes me stay in the moment. I don't think about anything but curling during an event-- you have to pay attention. Like even as a sweeper, you have to pay attention to what the rocks are doing. You have to listen for your teammates. You have to listen for your skip telling you what to do. You really can't be a good curler and not pay attention-- just like any other sport.

JEB: But then you find yourself more ready to work on Monday if you were curling all weekend?

MKT: Absolutely, it's great exercise and a lot of fun. I mean I lose weight in the winter time now which never used to happen.

JEB: Never happens to me...I gather up my layers to keep me warm in winter!

MKT: Ha! Yes, so that's really great. I do get energized by hanging out with people and curling together. And we always go out for a beer after --it's called broomstacking where the winners buy the losers drinks.

JEB: Broomstacking? So the losers win too! That's awesome.

MKT: Another technical term which I think also comes from its Scottish heritage. And sometimes when a team is losing really badly, they just stop playing, stack their brooms in the house, everybody else on the other team does it and then they all leave the ice to go do a shot.

JEB: That sounds fun and sportsmanlike! So you will definitely play Sundays and maybe Wednesdays next winter?

MKT: I don't know if I can make Wednesdays work, but everything is so up in the air right now. Like just even what our curling season will look like next year. So part of me is thinking I should take every opportunity that I can get to do it because I don't think we're going to be having bonspiels. Those are three days long, where everybody's packed in closely and talking the entire time.

So I don't think we're going to have any of that for a while.

JEB: They must have a virtual online curling game or something. I know many sports had virtual tournaments during the pandemic and people watched obscure sports like on "the ocho"!

MKT: Yes there was a virtual curling event, where a bunch of the Olympic players competed in it. And I have an app on my phone. It's called Curling Rocks where you aim and throw all the stones yourself. It actually did help me understand the geometry of curling a bit better.

JEB: Well, this has been interesting! It's a sport I have not covered and you definitely have a passion for it. I'm so glad that you're going to continue to do it. I know people like to hear about other people's passions. It sounds like curling has the good combination of camaraderie, but also some mental and physical challenges as a counter balance to the practice of law.

MKT: It's a really great sport. Everybody should try it. I would love to see a VBA team compete.

JEB: Well, if you build it, they'll come right. Isn't that how it works?

MKT: For sure that's an ongoing discussion. Our club did just get 501(c)(3) status and again I'd love to see a dedicated facility at some point. Honestly it's not a conversation we can have until the future is more certain.

JEB: Well, knowing you from law school, from the VBA incubator program, your practice and where you are now, you definitely have the energy and the drive, so I'm sure curling will live on in Vermont, in whatever form. And it sounds like you've got a lot of young people interested just in the last go.

MKT: I just would like to say though, there are great people involved in our club and everybody's a volunteer. The reason why we have all that interest is not because of me. It's because of a lot of other people in our club, especially those who take the time to coach young people.

JEB: It takes a village! Thanks so much for agreeing to be interviewed!

MKT: Thanks so much. I love talking about curling and I think the column is a great addition to the journal.

JEB: Thank you!

Do you want to nominate yourself or a fellow VBA member to be interviewed for Pursuits of Happiness? Email me at jeb@vtbar.org.



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RUMINATIONS

The Epidemic and the Law

Here we are in the summer of 2020, quarantined, masked, gloved, isolated, fearful. Non-essential businesses have been closed, and are just now opening, tentatively. Everything is tentative—schools, universities, sports, politics.¹ The epidemic has infected legislation, and triggered emergency orders from the Governor and the Supreme Court, restricting and regulating nearly every aspect of life. The courts have closed, jury trials are unavailable, and crime is down, since nobody can get out much. After this is over, there will be legal consequences—bankruptcies, divorces, foreclosures, personal injury suits, probate disputes. Epidemics come and go, but the law is there before and after, enforcing quarantines, regulating the relations among officials and people, quieting the storms, cleaning up the debris of crises, as it always has done.

Disease, viruses, germs, and epidemics meet the law largely retrospectively, after the crises are over. But not always. Sometimes diseases enter the courtroom directly. In August of 1807, the Woodstock courthouse was filled to capacity for the trial of Mrs. Ewen and George Lanphear for the murder of Lanphear's wife. Most of those present soon fell ill with smallpox.²

Legislation, unlike litigation, is prospective in nature.³ In the arena of public health, it focuses on prevention. Today we depend on government to keep us safe. We demand vaccines, drugs, ventilators, and the strong arm of enforcement to prevent or limit contagion. Before the end of the nineteenth century, government had only a modest role in responding to epidemics and contagious diseases. While the state was progressive in many ways, there was almost no recognition of a role in public health. Before the creation of the State Board of Health in 1886, it was the towns, not the state, that had the authority and duty of handling epidemics, and even then, there was a reluctance to get involved. Many people suffered and died alone. Others were attended by doctors, some of whom were untrained, and even the remedies trained physicians used were based on mistaken ideas now repudiated by science.

No epidemic has triggered the vast impositions on personal and commercial freedom as has Covid-19. Vermonters, mostly, have accepted these orders. There have been a few who have defied the orders,

walking around without masks, but most Vermonters have been compliant.

Quarantines

The first Vermont law on public health was adopted in 1784, and required selectmen to establish pest houses to isolate people suffering from smallpox.⁴ These were Vermont's first hospitals.⁵ Persons found to be infected with smallpox were ordered to move to the pest house and remain there until they were "sufficiently cleansed," and obtained "Liberty" from the selectmen of the town. That law imposed a \$500 fine on persons who voluntarily exposed themselves to the disease and a \$50 fine on persons who became aware of others suffering from the disease and failed to alert the selectmen of the infection.⁶ In 1797, the law was extended to apply to any non-resident who brought the smallpox into the state.⁷ Some otherwise healthy people would visit the pest house, believing this would give them immunity without the need for vaccination. During the Revolutionary War, this became common.⁸

In 1802, Joseph Damon went to the Wallingford pock-house to be inoculated against smallpox. After receiving the treatment, he tried to leave the premises, but the physician ordered him quarantined. Damon had not signed on to this. He would have believed he had a constitutional right to liberty. In the fight that ensued Elias Doty and Frederick Miller, following the orders of the doctor, wrestled Damon to the floor. Damon fought back, and in the melee stabbed each of them with a pen knife. Damon was convicted of assault and battery.⁹

Vermont's first epidemiologist, Dr. Joseph Gallup held strong opinions about quarantine. In his *Sketches of Epidemic Diseases in the State of Vermont* (1815), he called them oppressive "to the great injury of commerce, and annoyance of individuals." Gallup had recent experiences in managing epidemics. In 1811-1812, Vermonters were sickened and died of spotted fever and the following year suffered significant losses of life from lung fever. He thought the 40-day quarantine "useless," showing a "profound ignorance of the laws and principles that govern epidemic diseases."¹⁰

During the erysipelas epidemic of 1842, pregnant women would be isolated, to prevent contagion, but the disease en-

tered the sickroom with the physician. Drs. Charles Hall and George J. Dexter wrote about the effect of the disease on pregnant women. "With ordinary care, perfect seclusion and guarded from the influence of infectious causes, the patient might have some hope of escape, if the disease was communicated by the usual agents of infectious diseases. But not so; entire seclusion and even living out of the circle of infected atmosphere, is no safeguard, if during labour the patient is attended by a physician, who is engaged in daily practice among individuals affected by erysipelas or puerperal peritonitis."¹¹ There was no PPE in 1841, and no awareness of viruses, bacteria, or germs.

During the 1917 outbreak of infantile paralysis, children under 16 were excluded from all public gatherings; schools were closed; they could not be served ice cream at lunch counters or eat in restaurants, by order of the State Board of Health.¹² The 1918 influenza epidemic caused the State Board of Health to "embargo" Montpelier, Barre, Waterbury, Stowe, and Hardwick, prohibiting entry into those municipalities, and ordering the quarantining of any who stopped there. All schools, churches, picture houses, and places of public entertainments and meetings were closed.¹³

Prevention

Early on there was a growing sense that disease can come from unclean practices. In 1813, the legislature required selectmen to approve the location and operation of slaughterhouses.¹⁴ In 1852, the law prohibited placing any dead animal or animal substance on or near the bank of any lake, river, brook, running stream, or spring of water, to prevent them from being drawn or washed into the water.¹⁵ The following year, that act was amended to limit enforcement to the first three months of the time the violation occurred, illustrating the common practice of retrenchment that is a feature of the legislative process.¹⁶

The earlier laws required selectmen to establish pest houses but did not mandate inoculation before 1860. The legislature enacted a law that year mandating action by selectmen to quarantine those suffering from smallpox in a "place as remote from inhabitants as shall be convenient" and to remove those infected to that place. Each person taken there would be vaccinated to

prevent the spreading of the disease.¹⁷ But just how far the law would go to reaching beyond the pest house was as yet an unanswered question.

In reports of epidemics, a common element is blame. The 1814 lung fever was believed to have come from soldiers of other states encamped at Burlington. Typhoid erysipelas originated in Canada in 1841 and spread into Vermont from the north.¹⁸ Polio, first identified in Vermont by Dr. Charles Caverly in 1894, in his view actually started across the border in New York.¹⁹ New Coronavirus came from China. By this the physicians reflect the common belief that diseases aren't our fault.

Treatment

In 1875, a man named White sued the town of Marshfield for the selectmen's neglect and refusal to treat him for smallpox. The town was dismissed from the suit when it reached the Supreme Court. Judge James Barrett explained that the statute on smallpox did not impose duties on the town, but on the selectmen. "The selectmen are designated mainly because they would be in constant existence to answer the designation, and would be likely to be discreet and proper men to act in the matter, and, as citizens, would be as much interested to see that the matter was properly attended to, as anybody in town, having reference to the calls and interests of humanity on the one hand, and the treasury of the town on the other. The town is subjected to a specified liability in certain events, depending on the action of the selectmen; but no duty is imposed on it as a town, to be performed by the selectmen and for default in which the town is to be liable."²⁰

Doctors good and bad

In 1820, the Vermont legislature first regulated the practice of medicine and surgery. Granting legacy exceptions to those who were in practice, the law prohibited any new doctors from collecting fees for their services unless they had been admitted to a local medical society, had earned a bachelor's degree or doctorate from a legally constituted medical college, were of good moral character, and been licensed by a Judge of the Supreme Court.²¹ But this did not last. In 1838, the act of 1820 was repealed, and medicine and surgery unregulated for another 38 years.²² Finally, in 1876, a comprehensive licensing regime was implemented. The system relied on existing medical societies to appoint censors who would license practitioners. Graduates of medical colleges were granted certificates without having to pay a fee. Dentists, female midwives, and those who were

in practice in the same place of residence for five years were exempt.²³

Mistakes were made, even by the leading physicians. Dr. Gallup found the coincidence of earthquakes and comets and epidemics compelling. Gallup believed these phenomena triggered the release of galvanic or ethereal fluids from the earth and atmosphere, which he called miasmata, and connected those incidents with the outbreak of smallpox, typhoid fever, influenza, and consumption (tuberculosis).²⁴ Dr. Charles Hall, the Tony Fauci of the early 1840s, having experienced the double blow of an epidemic of erysipelas followed the next year by an outbreak of lung fever, believed the vapors from swamps were a cause, and urged their draining and replacement with gardens.²⁵ Dr. Charles Caverly, who was the first physician to identify polio in 1894 and served for 33 years as the chair of the Vermont State Board of Health, came to the conclusion that the disease was not contagious.²⁶

Treatments included bleeding, hot baths, and when those were not available, wrapping the patient in blankets soaked in hot water and cayenne pepper. Gallup condemned the practice of treating disease with worms, but other doctors relied on purges "and pukes," to little effect.²⁷ Dr. Safford explained his success during the typhus outbreak in 1810, saying he never used a lancet, but Dr. Gridley, a Castleton physician, treated pneumonia "with a bold hand," drawing three quarts of blood from a patient in two sessions.²⁸ Opium and brandy were frequently used to treat fevers, and abused, although it only brought temporary relief.²⁹

The state board of health

The state finally took on responsibilities for public health in 1886, with the creation of the state board of health. The board's duties were broad: to "take cognizance of the interests of life and health among the inhabitants of the State; ... [and] cause to be made sanitary investigations and inquiries respecting causes of disease, especially of epidemics, and the means of prevention; the sources of mortality, and the effect of localities, employments, habits, and circumstances of life on the public health." The board was also required to visit towns suffering from epidemics, contagious diseases, and other "unusual" sicknesses; adopt regulations to better preserve the public in contagious and epidemic diseases, and keep a registry of all births, deaths, and marriages.³⁰ In 1892, the law required the appointment of local health officers, who would make regular sanitary inspections and have the power to order destruction of "all nuisances, sources of filth, or causes of sickness." The board could iso-

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late "all persons and things infected with or exposed to contagious or infectious disease," and furnish medical treatment and care for the sick who could not otherwise be provided for.

In the 1892 act the Board's powers were also enhanced to include study of "the causes which tend to their development and spread" of disease. Physicians and local health officers were required to report all cases of smallpox, varioloid, Asiatic cholera, typhus fever or yellow fever, provide a suitable supply of vaccine virus approved by the state board; provide and administer safe vaccinations for all persons who need the same.³¹

Dr. Duane C. Pierce failed to report a suspected case of diphtheria to the health officer of Plymouth. He had attended a sick child in 1911, and filed no report, as required by law. The State's Attorney brought a criminal complaint against him, relying largely on circumstantial evidence to prove his knowledge of the child's disease. There were other cases of the disease in the same village, and as the law required the homes of those victims were quarantined with placards reading "Diphtheria." The doctor had also attended the autopsy of the child's sister several months earlier, which showed she had died of the same disease. On appeal his conviction was upheld.³²

Additional duties were thrust on the State Board of Health. In 1902, it was charged with studying and suggesting improvements to public buildings, including schools and churches, to ensure proper ventilation, setting standards for sanitation including septic tanks and town sewage systems. The law set fines for those who were infected and crossed the border into another town without the express permission of the local health office. It also prohibited butchering of animals within 200 feet of a dwelling house, without the owner's consent, and leaving dead animals within 500 feet of a highway.³³ Registration of births, marriages, divorces, and deaths

was mandated by another law in 1902. Physicians were required to give the cause of death of each decedent, and a certificate of burial was required before interment.³⁴ In 1913, the mandate to report each case of infectious disease was extended to all hospitals, charitable or correctional institutions, and dispensaries, and the law first required a positive test for venereal disease as a prerequisite to marriage.³⁵

Tuberculosis was widespread in Vermont in every year. A 1913 law charged selectmen with the duty to investigate every case in their town, request the opinion of two physicians as to the condition, and order the afflicted to be quarantined in the Vermont Sanatorium in Pittsford.³⁶

The widow of the late U.S. Senator Redfield Proctor financed the construction of the sanatorium for tuberculosis patients of moderate means in Pittsford in 1907. For nearly 60 years it offered isolation, ultra-violet lighting, outdoor sleeping arrangements, and bed rest. The state sent patients to the facility and took it over in 1921. Once admitted, no patient was allowed to leave.³⁷

The germ theory and the use of regulation to prevent disease

North Hero voters appropriated money to pay Dr. Fancher to inoculate the inhabitants exposed to smallpox in 1820 with the kine pox. David Strong, the town delinquent tax collector, reacting to Dan Hazen's refusal to pay the tax, distrained Hazen's cow. The county court awarded Hazen \$5.00 in damages, and Strong appealed. Judge Titus Hutchinson wrote the Supreme Court's opinion, overturning the award. He explained, "Now, experience fully evinces the eminent utility of the kine pox in saving expense, as well as placing a safeguard around each individual, to protect life and health, while all attend to their usual vocations, instead of being confined with a loathsome disease, or becoming nurses to those who are thus confined. We

are, therefore, disposed to support the selectmen, and the town, in this measure to prevent the spreading of the disease, when circumstances render any measures necessary."

That the only person in town known to have the disease had left before the general inoculation of the residents occurred did not dissuade the Court from ruling in favor of the tax collector. Hazen's argument that while he had attended the town meeting where the vote was taken and had voted against it held no merit for the high court. Appropriations for "preventive measures" are legitimate and prudent expenses. The vote and the tax, and the subsequent distraint of the cow, were valid.³⁸

Adjacent to King Street in Burlington in 1864 were pools of "putrid, filthy, noxious and stagnant water," with "hurtful, pernicious and unwholesome smells" and corrupted air. The selectmen were asked to abate this nuisance and refused. The state sued the town to force action. Judge Luke P. Poland, writing for the Supreme Court, dismissed the indictment, concluding that a town was not responsible for the abatement of private nuisances. A statute provided, that "the selectmen shall examine into all nuisances, sources of filth, and causes of sickness that may in their opinion be injurious to the health of the inhabitants within their town, and the same shall destroy, remove or prevent as the case may require." Judge Poland did not read this law as mandating action in this case by the town.³⁹

In 1895, the Supreme Court struck down a rule adopted by the State Board of Health prohibiting pigpens within 100' of dwellings. Judge Henry Start, writing for the court, explained that the rule was unjustified because it lacked a reasonable relationship to the problem sought to be addressed. "A pigpen may be a menace to public health when situated in a city or village and perfectly harmless when situated upon a farm; and the fact that a pigpen situated in a city or village is a nuisance, and endangers public health, and ought to be abated, furnishes no reasonable ground for abating a pigpen upon a farm, which is not a nuisance, and in no way affects the public health."

"It reaches beyond the scope of necessary protection and prevention into the domain of restraint of lawful business and use of property. It is founded on fear and apprehension of a remote possible danger to the public health, and not upon its existence, or upon reasonable grounds to apprehend that any considerable portion of the pigpens affected by it endanger or will endanger public health." That there was no evidence of any epidemic or contagious diseases extent in the town where the plaintiff resided provided additional support for the decision to refuse to enforce

the rule.⁴⁰

Speyer represents the high-water mark for a species of judicial decision-making that believed government exceeded its powers when it acted to prevent disease, as opposed to treating it. The decision was roundly criticized in 1970. Open burning at the Waterbury dump was ordered to stop by the State Board of Health in the late 1960s. The smoke curled up onto the southbound lane of I-89. Waterbury appealed the order, claiming it was arbitrary and unreasonable, beyond the legislative purpose and the statutory directive, relying on *State v. Speyer*. This argument did not succeed. Justice Albert Barney, writing for the court, looked back at the *Speyer* decision, explaining that it “came down at a time when the germ theory was still a recent concept,” and was

... a laudable demand that the necessity for drastic curtailment of current practices be more fully demonstrated is understandable. Yet given the background of general knowledge possessed by courts and citizens today, the result reached in that case would be incomprehensible. The lesson seems plain that, in reviewing measures for the preservation of public health and, indeed, for the protection of the ability of humankind to survive, more regard must be had for the cumulative consequences of human activity. We are just now commencing to understand that we are beginning to suffer the ecological consequences of human activities formerly regarded as harmless and previously determined ineligible for regulation. In 1892, certainly, it had not been demonstrated that the needs of future generations were menaced enough to require restraints on the non-criminal but deleterious physical activities of individuals or industries.⁴¹

The State Board of Health ordered the Village of St. Johnsbury to cease using the Passumpsic River as a domestic water supply in 1906, and the Village challenged the order. The water was “so contaminated, unwholesome, and impure” that the public health was endangered. The statute clearly authorized the action, but no hearing or notice was required. The Village claimed this a violation of personal liberty and its constitutional rights, but the Supreme Court, in a decision written by Chief Judge John Rowell, affirmed the order. It relied on *Jacobson v. Massachusetts* (1905), a decision by the U.S. Supreme Court that upheld the legality of compulsory vaccination for the prevention of smallpox. The order itself was proper. “[W]hen such discretion is exercised in a given case by means appropriate and reasonable, not oppressive nor dis-

criminary, it is not subject to constitutional objection.” That defendants would still enjoy notice and an opportunity for a hearing before the county court was enough to avoid the lack of due process before the board.⁴²

K.W. Morse jumped off the dock on Berlin Pond in August of 1909, and swam, and was promptly cited by the State Board of Health for violating its order prohibiting swimming in the Montpelier water supply. Morse appealed the violation, and Judge George Powers, writing for the Supreme Court, supported the board’s actions. “Turning again to the case in hand, we are not satisfied and cannot say that the regulation prohibiting bathing in Berlin pond was a palpable violation of the respondent’s rights; nor can we from the record, aided by facts of which we may take judicial notice, say that such prohibition was unnecessary or unreasonable. On the contrary, we take notice of the germ theory of disease, and that the human body may give off germs dangerous to the public health, and that, should these reach the intake of the water supply, they might, as suggested by the State Board, spread contagion throughout the city.” Morse claimed the action was a taking of private property without just compensation. Unlike the *Speyer* case, the police power prevailed.⁴³

Fifteen years later, a man was cited for boating in Berlin Pond. On appeal, he argued there was no proof that he had contaminated the pond. Again the police power prevailed, the violation upheld. The court could see no reason why it should depart “from a policy fully established in our decisions of approving a generously free exercise of the power to safeguard the health of the public.” Justice Powers wrote the decision of the court, and explained, “While the danger of contamination is not quite so plain as it was in the Morse Case, we are satisfied of its presence, and that boating on this pond, however harmless it of itself may be, would give rise to a reasonable apprehension that such use might involve mingling with the water foreign matter that would tend to render it unfit for drinking purposes.”⁴⁴

In a contest between constitutional principles, the police power (Article 5 of the Vermont Constitution) began to gain priority over the takings clause (Article 2) and other constitutional protections. This principle is the foundation for laws which appear to some as intrusive and offensive to their rights of property ownership, including zoning, Act 250, and currently the executive orders of the Governor to close businesses, enforce social distancing, and protect against the contagion of Covid-19.

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Disease and the civil law

Disease intrudes itself in many aspects of the civil law, including the poor laws. Who would bear the cost of treatment when the infected was quarantined in one town, was impoverished and unable to pay for it, and was a resident of another town? After Mrs. Hinckley returned to Brattleboro from New York in 1848, she became ill with smallpox. The disease spread throughout East Brattleboro, and the selectmen decided to establish a residence remote from the inhabitants where infected persons might be quarantined. Lyman Ballard, a pauper, was infected, and sent to the house, although other victims were allowed to stay in their own homes. Brattleboro sued the town of Stratton for the costs of keeping the house, the physicians, and other attendants, as Lyman was a Stratton resident, and it was Stratton's obligation to support him. After a trial, the court limited recovery to the actual costs of providing care for Lyman, not the rental of the house or the costs of preparing it for occupancy, and on appeal the high court affirmed the decision.⁴⁵

The issue of whether a municipality would be held liable for disease came back again in the 1930s. Joseph Boguski died of typhoid fever in 1934, contracted from drinking from the Winooski City water system. A check valve formerly used to increase the water pressure in the system which allowed river water to mix with the city's domestic lines was accidentally opened, causing widespread illness throughout the city. The sewage water of all the towns on the Winooski River upstream to Barre and Montpelier polluted the water of the river and contaminated the city's supply. Sued for negligence, the city challenged the award of damages, as no typhoid bacillus had been found in samples of the water. Bacillus coli had been found, and that bacterium was commonly found in waters polluted with typhus germs.

The court, instructing the jury, allowed the inference that the river water had contained the typhoid bacillus to support the inference that Boguski had died by drinking from the city system. The Supreme Court upheld the award, concluding that the state was not obliged to prove the source of the contamination. Chief Justice Powers explained, "Direct proof is not necessary. Circumstantial evidence may be resorted to, though the case is a civil one." Supplying water is not a governmental activity; it is proprietary, and there is no sovereign immunity available to the municipality.⁴⁶

Workmen's Compensation

Disease entered the workplace. After the development of workmen's compensa-

tion laws, now called workers' compensation, there were claims and defenses that required courts to consider whether a disease could justify awards.

Hiram Miller fell while operating a carbondum saw at work, injuring his left hip and chest. Seven weeks later, he died of acute pulmonary tuberculosis, exacerbated by silicosis. His widow applied for Workmen's Compensation, and the Commissioner approved an award for her. The company appealed, claiming that the "germs of disease do not enter the system through an injury" such as this. The Supreme Court upheld the Commissioner's decision, explaining that the injury "lighted up" his latent tuberculosis leading to an earlier death than had the illnesses taken their course. His injuries were a contributing or proximate cause of his death.⁴⁷

Margaret Sharron Masterson contracted pulmonary tuberculosis while working at the Rutland Hospital, and filed for workmen's compensation. In a 1970 decision, the Supreme Court concluded that this was not a "personal injury by accident," under the statute, and upheld the Commissioner in denying the award.⁴⁸

S.W. Knox claimed tort damages for injuries suffered from an accident on a defective town highway. He testified he had suffered discharges of blood from his bowels. The town of Wheelock defended, arguing that Knox had hemorrhoids and diphtheria, and that the continuing pain and weakness in the back was not caused by the accident. At the 1881 trial, the jury ruled in Knox' favor.⁴⁹

Venerando Paz, a Barre stonecutter, died in 1931, and his heirs claimed his insurance company owed them the value on two policies. The company balked, claiming misrepresentation on the application. Paz could not read English, and an agent had completed the form. Paz did not disclose he had been treated for silicosis, caused by granite dust in his lungs. Silicosis had led to pulmonary tuberculosis. In applying for the policies, Paz had reported that other than the 1918 flu he had only suffered from occasional colds. While that clearly indicated fraud, sufficient to negate coverage, other evidence showed that the company had received a report before issuing the policies indicating Paz' true condition. The evidence had not been shared with the company's medical team, however. Paz' heirs never collected on the policies.⁵⁰

Executive Orders

The epidemic is stronger than the law, but the natural expectation of liberty within the heart wants to resist it. Some citizens oppose closure of businesses, masking, and self-isolation. Some claim their constitutional rights are trampled on, and

yet, most courts will not touch the subject of whether government has gone too far.

The Governor of Vermont has supreme executive power.⁵¹ The civil code includes a chapter on emergency management, which endows the chief executive with powers to declare emergencies and exercise broad powers to address a crisis.⁵² Governor Philip Scott issued Executive Order 01-20 on March 13, 2020, which has been amended at least 14 times since then, establishing and then easing controls on social distancing, business, and the wearing of masks. In two and a half centuries, Vermonters have never experienced this degree of government control over their lives, even in times of former epidemics and contagious diseases.

The issue of the extent and nature of the social and commercial restrictions has been tested this spring in several jurisdictions. In Pennsylvania, its Supreme Court upheld the Governor's closure order and rejected claimed violations of due process, taking of private property for public use without just compensation, equal protection, separation of powers, free speech, and free assembly. The lack of notice and a right to a hearing in the promulgation of the order was no hurdle to the imposition of the order, as individual businesses could still challenge their status as non-essential businesses.⁵³

Churches in New Mexico, Virginia, and Kentucky tried to free themselves from emergency orders restricting the size of congregations on the basis of free exercise of religion, to no avail.⁵⁴ In Massachusetts, cannabis retailers challenged the claim that they were non-essential, while medical marijuana and alcohol sales were exempt.⁵⁵ It happened in Michigan, where retailers of vaping products made a similar claim.⁵⁶ Neither succeeded.

Writing a concurring opinion in that case, Judge Mark T. Bonstra of the Michigan Court of Appeals, District III explained that he felt he had to "write separately because this case highlights for me a growing concern about governmental overreach, both in this case specifically and also more generally, and because sometimes we as Americans need a wake-up call. This case—particularly in the context of other recent governmental actions—provides one."

The Supreme Court of Wisconsin did strike down emergency closure orders last month, but solely because it was the un-elected official in the Human Services Agency who made the ruling, not the legislature or the governor.⁵⁷

Clearly the police power is almost as powerful as the coronavirus.

In *State Board of Health v. Village of St. Johnsbury* (1909), Chief Judge John Rowell boiled it all down, saying, "the liberty secured by the Constitution of the United

States to every person within its jurisdiction does not import an absolute right in each person to be at all times and in all circumstances wholly free from restraint; that there are manifold restraints to which every person is necessarily subject for the common good; that on any other basis organized society could not exist with safety to its members; that society based on the principle that every man is a law unto himself would soon be confronted with disorder and anarchy; that real liberty could not exist under the operation of a principle that recognizes the right of each individual person to use his own whether in respect of his person or his property, regardless of the injury that might be done to others; that that court had more than once recognized it as a fundamental principle that persons and property are subject to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state, of the perfect right of the Legislature to do which no question was ever raised, nor on general principles ever can be raised as far as natural persons are concerned."⁵⁸

Paul S. Gillies, Esq., is a partner in the Montpelier firm of Tarrant, Gillies & Richardson and is a regular contributor to the Vermont Bar Journal. A collection of his columns has been published under the title of Uncommon Law, Ancient Roads, and Other Ruminations on Vermont Legal History by the Vermont Historical Society. Paul is also the author of The Law of the Hills: A Judicial History of Vermont (© 2019, Vermont Historical Society).

¹ Dr. Benjamin Rush is quoted as saying, "Life is a temporary victory over causes that induce death." Sylvester Graham, *Lecture on Epidemic Diseases Generally, and Particularly the Spasmodic Cholera* (Boston: David Cambell, 1838), 1.

² *The Vermont Journal*, 31 August 1807, 3; J.A. Gallup, *Sketches of Epidemic Diseases in the State of Vermont* (Boston: T.B. Wait & Sons, 1815), 54.

³ *State v. Kenvin*, 191 Vt. 30, 38 A.3d 26 (2011); *Northwood AMC Corp. v. Am. Motors Corp.*, 139 Vt. 145, 148, 423 A.2d 846, 849 (1980). "The general presumption is that legislation is intended to apply only prospectively." But see 3 V.S.A. §§ 213-214.

⁴ "Pest," in this context, relates to *pestilential*, not rodents.

⁵ Vermont's first hospital, offering general medical and surgical services, was Mary Fletcher Hospital, established in 1876 and opened in 1879, renamed Medical Center Hospital of Vermont in 1967. <https://www.uvmhealth.org/medcenter/pages/about-uvm-medical-center/overview/history.aspx>.

⁶ "An act to prevent the spreading of small pox," *Laws of the State of Vermont 1781-1784* (Montpelier, Vt.: Secretary of State, 1965), 235-236.

⁷ "An act to prevent the spreading of the small pox," *Laws of the State of Vermont Revised and passed by the Legislature, in the year of our Lord, One Thousand Seven Hundred and Ninety Seven* (Rutland, Vt.: Josiah Fay, 1798), 395-396.



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⁸ Hiland Hall, "Bennington," Abby Maria Hemenway, ed., *The Vermont Historical Gazetteer I* (Burlington, Vt.: Miss A.M. Hemenway, 1867), 179.

⁹ *State v. Damon*, 2 Tyl. 387 (1803).

¹⁰ Gallup, *Sketches*, 91. He was the first to inoculate for the "kine or cow-pox" in Woodstock. Henry Swan Dana, *History of Woodstock, Vermont* (Boston: Houghton, Mifflin and Company, 1889), 242-243.

¹¹ Charles Hall and George J. Dexter, *Account of the Erysipelatous Fever, as it appeared in the northern section of Vermont and New Hampshire, in the years 1842-3*, in *The American Journal of the Medical Sciences, New Series VII* (Philadelphia: Lea & Blanchard, 1844), 19-20.

¹² "Ravages of the Influenza Epidemic," *Bulletin of the Vermont State Board of Health XVIII:1* (Brattleboro, Vt.: State Board of Health, 1918), 13-15.

¹³ "State Board Acts," *The Brattleboro Daily Reformer*, October 5, 1918; "Strict Quarantine Maintained," *News and Citizen*, 16 October 1918, 1.

¹⁴ "An act to prevent the continuance of certain public nuisances," *Laws passed by the Legislature of the State of Vermont, at their session at Montpelier, on the second Thursday of October, One Thousand eight hundred and thirteen* (Rutland, Vt.: Fay & Davison, 1813), 7-8.

¹⁵ "An act to prohibit and abate nuisances," *The Acts and Resolves passed by the General Assembly of the State of Vermont, at the October session, 1852* (Montpelier, Vt.: E.P. Walton & Son, 1852), 55-56.

¹⁶ "An act defining the time within which prosecutions shall be commenced under an act entitled, 'an act to prohibit and abate nuisances,' approved November 18, 1853," *The Acts and Resolves passed by the General Assembly of the State of Vermont, at the October session, 1860* (Montpelier, Vt.: E.P. Walton & Son, 1860), 14.

¹⁷ "An act in amendment of Chapter Ninety-One of the Compiled Statutes, in relation to the preservation of the public health," *Acts and Resolves of the General Assembly of the State of Vermont, at the October Session, 1860* (Montpelier, Vt.: E.P. Walton, 1860), 36.

¹⁸ "Erysipelas: History," *Twentieth Century Practice An International Encyclopedia of Modern Medical Science XVI* (New York: William Wood and Company, 1899), 407.

¹⁹ Ray M. Merrill, *Introduction to Epidemiology* (Burlington, Ma.: Jones & Bartlett Learning, 2013), 390.

²⁰ *White v. Town of Marshfield*, 48 Vt. 20 (1875). Recently the Supreme Court ruled on the issue of sovereign immunity, in *Civetti v. Turner* (2020). Civetti had been injured in an accident caused by the failure to maintain a town highway. The trial court dismissed the complaint, but on ap-

peal the Supreme Court reversed, concluding that the case should have been brought against the town, not the road commissioner. His defenses became the town's when sued, among them qualified immunity for discretionary decisions. The defense is not available for ministerial functions, and the high court remanded the case to the trial court to learn more about the nature of the deficiency in road maintenance. When there is no "weighing of policy considerations," there is no shield. *Civetti v. Turner*, 2020 VT 23.

²¹ "An act, regulating the practice of Physic and Surgery within this State," *Laws Passed by the Legislature of the State of Vermont, Oct. Session, 1820* (Middlebury, Vt.: Copeland and Allen, 1829), 27-28.

²² "An act, repealing an act regulating the practice of Physic and Surgery," *Acts and Resolves Passed by the Legislature of the State of Vermont, at their October Session, 1838* (Montpelier, Vt.: E.P. Walton and Son, 1839), 20.

²³ "An act to regulate the practice of medicine and surgery in the State of Vermont," *Acts and Resolves passed by the General Assembly of the State of Vermont, at the Fourth Biennial Session, 1876* (Rutland, Vt.: Tuttle & Company, 1876), 197-199.

²⁴ Gallup, *Sketches*, 104-105.

²⁵ Charles Hall, M.D., "The Fevers of the Champlain Valley," *Boston Medical and Surgical Journal*, Vol 35-36 (Boston: David Clapp, 1847), 317-322, 328-334, 359-362.

²⁶ Ray M. Merrill, *Introduction to Epidemiology* (Burlington, Ma.: Jones & Bartlett Learning, 2013), 390.

²⁷ Gallup, *Sketches*, 66.

²⁸ *Ibid.*, 58-59.

²⁹ Gary G. Shattuck, *Green Mountain Opium Eaters* (Charleston, S.C.: The History Press, 2012), 14-15.

³⁰ "An act to prevent the spreading of contagious diseases and to establish a State Board of Health," *Acts and Resolves Passed by the General Assembly of the State of Vermont at the Ninth Biennial Session, 1886* (Springfield, Vt.: Press of Springfield Printing Company, 1887), 64-66.

³¹ "An act defining the duties and powers of state and local boards of health, health officers and others," *Acts and Resolves Passed by the General Assembly of the State of Vermont at the Twelfth Biennial Session, 1892* (Burlington, Vt.: The Free Press Association, 1892), 90-95.

³² *State v. Pierce*, 87 Vt. 144, 88 A. 740 (1913).

³³ "An act for the preservation of the public health," *Acts and Resolves passed by the General Assembly of the State of Vermont, at the Seventeenth Biennial Session, 1902* (Burlington, Vt.: Free Press Association, 1902), 126-135.

³⁴ "An act relating to the registration of births, marriages, divorces and deaths," *ibid.*, 136-144.

³⁵ "An act to prevent the spread of certain infectious diseases," *Acts and Resolves passed by the General Assembly of the State of Vermont, at the Twenty-second Biennial Session, 1912* (Montpelier, Vt.: Capital City Press, 1913), 292.

³⁶ "An act relating to the care of indigent tuberculous persons," *ibid.*, 292-294.

³⁷ Don Wickman, *Rutland Herald*, 23 September 2004. The facility closed in 1966, and now houses the training facility for law enforcement officers.

³⁸ *Hazen v. Strong*, 2 Vt. 427, 432 (1830).

³⁹ *State v. Burlington*, 36 Vt. 521 (1864).

⁴⁰ *State v. Speyer*, 67 Vt. 502, 32 A. 475 (1895).

⁴¹ *Vermont Board of Health v. Town of Waterbury*, 129 Vt. 168, 172, 274 A.2d 495, 498 (1970).

⁴² *State Board of Health v. Village of St. Johnsbury*, 82 Vt. 276 (1909).

⁴³ *State v. Morse*, 84 Vt. 387, 80 A. 189 (1911).

⁴⁴ *State v. Quattropani*, 99 Vt. 360, 133 A. 352 (1926). Three years earlier the state had prosecuted Perley Hall for boating and fishing in Berlin Pond. On appeal the Supreme Court reversed the judgment for the state because the judge's instructions treated the giving of the notice required by the law as a fact, with no evidentiary support. *State v. Hall*, 96 Vt. 379 (1923). In *Barnett v. City of Montpelier*, 191 Vt. 441, 49 A.3d 120 (2021), the Supreme Court found that the order of the State Board used in *Morse* and *Quattropani* was no longer valid, that Montpelier's charter did not grant authority over public waters, and reversed the conviction of the plaintiffs, eliminating the prohibition against boating, fishing, or swimming in the pond.

⁴⁵ *Town of Brattleboro v. Town of Stratton*, 24 Vt. 306 (1852).

⁴⁶ *Boguski v. City of Winooski*, 108 Vt. 380, 389, 187 A. 808, 812 (1936).

⁴⁷ *Morrill v. Bianchi & Sons, Inc.*, 107 Vt. 80, 176 A. 416 (1935).

⁴⁸ *Masterson v. Rutland Hospital, Inc.*, 129 Vt. 81, 271 A.2d 848 (1970). Present Vermont law recognizes that "injury" may include "occupational diseases resulting from injury within two years" of the injury. 21 V.S.A. § 601(7).

⁴⁹ *Knox v. Town of Wheelock*, 54 Vt. 150 (1881).

⁵⁰ *Pellon v. Connecticut General Life Insurance Co.*, 105 Vt. 58, 168 A. 701 (1933); *Pellon v. Connecticut General Life Insurance Co.*, 107 Vt. 128 (1935). On remand, a second trial was held, where new evidence of the report was introduced, showing that the reviewed had concluded "there might be a tubercular condition developing," which was insufficient in the court's view to constitute notice of an underlying condition. A verdict for the company was affirmed on appeal.

⁵¹ Vt. Con. Ch.2, Sec. 3.

⁵² 20 V.S.A. § 9.

⁵³ *Friends of Danny DeVito v. Wolf*, 2020 WL 18571000 (2020). April 13, 2020. Not the film star, but a candidate of the same name running for the state legislature.

⁵⁴ *On Fire Christian Center, Inc. v. Fischer*, U.S. District Court, W.D. Kentucky. 2020 WL 1820249; *Lighthouse Fellowship Church v. Northam*, U.S. District Court, E.D. Virginia, Norfolk Division. 2020 WL 2110416.; *Legacy Church, Inc. v. Kunkel*, U.S. District Court, D. New Mexico. -- F.Supp.3d--, 2020 WL 1905586.

⁵⁵ *Commcan, Inc. v. Baker*, 2020 WL 1903822.

⁵⁶ *Marc Slis and 906 Vapor v. State of Michigan and Department of Health and Human Services*, 2020 WL 2601241.

⁵⁷ *Wisconsin Legislature v. Palm*, 2020 WL 42.

⁵⁸ *State Board of Health v. Village of St. Johnsbury*, 82 Vt. 276, 278, 71 A. 581, 583 (1909), quoting *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 26, 25 S.Ct. 358, 49 L.Ed. 643 (1905).



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WRITE ON

A Reflection on Law, Legal Education, and Pandemic

I was supposed to have written this article for the Spring Bar Journal that was published several months ago. But, like so many of us, life got side-tracked by Covid-19 and I was unable to meet the Spring Bar Journal deadline as I rushed to get my classes at Vermont Law School online so that we could keep teaching the next generation of lawyers about the power of law and its unique ability to do good in the world. Now, as I sit back down to finish the Spring Bar Journal article I had been writing on our freshly minted “Appellate Advocacy Project” at Vermont Law School, I find myself struggling to find meaning in the words. Classic writer’s block I suppose. With so much hardship and chaos right now, it can feel difficult to focus on things like the pedagogy of legal education or the intricacies of IRAC or rule synthesis. And yet, something tells me that maybe training the next generation of legal advocates is exactly what we need.

As a law professor and constitutional rights advocate, there is much to be saddened about in these trying times. Political life has changed.¹ Civil liberties have been severely hampered.² Economic life has ground to a halt.³ And, in-person social interactions are limited and awkward at best.⁴ Yet, despite all this, every time I interact with my students and colleagues for some strange reason I cannot help but feel inspired by the opportunity that this obstacle has given us. Maybe it is too soon to feel optimistic. Maybe it is just the birds and the summer sun on my face after a cold, dark, and confusing winter and spring. But whatever it is, I see great possibilities around the corner. For all its hurt and pain, the pandemic and the social unrest we’ve seen, have given us the rarest of chances to build something better. And, lawyers and the law will be a big part of that change – we always have been.

In many respects, this societal shake-up will give us a clean canvas, the likes of which perhaps only three generations in our Nation’s history have had the opportunity to paint on. Yes, we’ve had national emergencies such as the Cuban Missile Crisis and 9/11, but only the Revolutionary Generation, the Civil War Generation, and the Great Depression Generation have truly had the chance to build a new society from the rubble of the old. In many respects, each of those generations succeeded and each failed.

From the Revolution we got our Constitutional Rights – but many only applied to propertied white men.⁵ From the Civil War, we legally eliminated slavery – but we birthed Jim Crow.⁶ From the Great Depression, we built a New Deal – but we laid the foundation for economic inequality.⁷ As with so much social change, lawyers have played a key role. From Charles Hamilton Houston’s legal strategy culminating in *Brown v. Board of Education*⁸, to the Supreme Court’s landmark ruling in *Obergefell v. Hodges*⁹, lawyers have always been on the front lines of change. Now, as we re-emerge after the global pandemic and face renewed focus on race and poverty in the wake of George Floyd, we will once again be at the drawing board. The society we build will not be a utopia. But as lawyers we can, and we must, seize this moment to build something new and something better.

And, that brings me back to my students – the future of the legal profession. They will inherit the society and the legal profession in which we currently live and practice. Our profession is one that clearly helps frame our society. Their ability to not only think like a lawyer, as we so often implore them to do, but to write and act like the social engineers that lawyers can be is critical to our future. They must have a deep reverence for both the Power of the Law and the Rule of Law – principles deeply rooted in a Vermont Law School Education.

As it turns out, I am teaching Professional Responsibility this summer (online, of course) and all of these issues seem relevant to a broad conversation about what it means to be a law student and a lawyer during these trying times. We often think about professional responsibility as something we owe to our clients, but all of the difficulties we’re facing remind me that the very concept of professional responsibility also implies a duty to society at large. As the Model Rules of Professional Conduct put it “[l]awyers play a vital role in the preservation of society.”¹⁰

As practitioners our job is often to persuade a judge or jury that our arguments are legally sound. In order to do this, we need to use analysis and reasoning to show the judge or jury why we are correct. It is never enough to simply assert our position in a conclusive manner. It seems to me, as I Zoom meet with my students to discuss writing and the professional responsi-

bility, that lawyers are (as we always have been) uniquely qualified to help our society emerge from the current times because of our ability to write, reason, cajole and persuade. And, to use all of these skills, to help reimagine and reinvent ourselves. To have the once in a hundred years chance to create a better world where the universal desires for liberty, justice, opportunity, and solidarity, equally applied, are there for the taking. What a responsibility. What a glorious opportunity.

¹ See <https://www.demconvention.com/blog/protecting-public-health-an-update-from-the-dncs-rules-bylaws-committee/> (detailing the possibility of a virtual Democratic convention in August 2020).

² See <https://www.theguardian.com/global/video/2020/jun/02/protesters-brutally-dispersed-ahead-of-trumps-photo-opportunity-with-a-bible-video> (describing protests and the use of force against protesters).

³ See <https://vermontbiz.com/news/2020/may/22/vermont%E2%80%99s-unemployment-rate-increases-156-percent-april> (highlighting the fact that Vermont’s unemployment rate hit nearly 16% in April 2020).

⁴ See <https://www.cnn.com/2020/05/29/health/social-distancing-relationship-strain-wellness-trnd/index.html> (indicating that social distancing strains relationships).

⁵ See <https://www.aclu.org/other/bill-rights-brief-history> (explaining that women, minorities, and those without property were excluded from many of the benefits afforded by the Bill of Rights).

⁶ See <https://www.history.com/topics/early-20th-century-us/jim-crow-laws> (describing the Jim Crow era after the Civil War).

⁷ https://web.stanford.edu/class/e297c/poverty_prejudice/soc_sec/hgreat.htm.

⁸ See <https://www.naacp.org/naacp-history-charles-hamilton-houston/> (highlighting Houston’s strategy to attack state education laws as the “Achilles heel” of Jim Crow).

⁹ See <https://www.theatlantic.com/politics/archive/2015/07/gay-marriage-supreme-court-politics-activism/397052/> (describing the legal and political strategy underlying the Obergefell decision).

¹⁰ MODEL RULES OF PROF’L CONDUCT, PREAMBLE AND SCOPE (2009) available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/.



WHAT'S NEW

"Meet" You at the Webinar

What's new? Well, the *Bar Journal* coming out in July for one thing! Apologies to all of our loyal readers for the delay in the publication of the 2020 Summer Journal. But alas, nothing in 2020 has been 'according to plan.'

We wanted to take this opportunity to thank our members who attended our virtual Mid-Year Meeting, in bite-sized pieces as it was. As a professional association, we know that our biggest asset is our membership and it is particularly important to provide opportunities for networking and camaraderie among our members. And oh, how difficult that is in 2020!

What really made this year's Mid-Year Meeting stand out was our presenters. We were so fortunate to have dozens of our colleagues volunteer to share their wisdom and put on quality local programming, even if through a computer screen. We had judges share motion practice tips, employment law practitioners dive into thorny hiring issues, government lawyers give a primer on all things administrative law, environmental lawyers educate us on dam safety, our wellness guru teach us how to reduce stress and be mindful, lawyers and reporters share best practices in media advocacy, court employees give an e-filing tutorial, law practice management partners go into depth about billing and LPM software, lawyers from 3 generations lead an interactive discussion on intergenerational practice, the Commission on the Well-Being of the Legal Profession give an update on the State Action Plan, lawyers and stakeholders brainstorm about paralegal licensure options, business law leaders go into the finer points of equity incentives and of course have Mike Kennedy deliver our ever popular ethics pub quiz, webinar style!

Many of these programs are now avail-

able in our digital library, in case you missed them. The materials are also available on our CLE Events calendar on the date of each program. Take a gander and see what courses you'd like to watch via self-study. Or, wait until our Annual Meeting, which is sure to have something for everyone! Watch our website and social media as the annual meeting unfolds on, and around October 2, 2020. We will have sessions on remote investigations, the 19th Amendment, the electoral college, human trafficking, medical malpractice, implicit bias and much more!

One Mid-Year Meeting program that deserves its own mention was in our series of presentations on Implicit Bias, with this session, coincidentally planned last December, focusing on race. Participants learned more about redlining, sentencing, discipline in education, jury draws, employment applications, weapons associations, blind assumptions and so many other indicia of racial disparities which usually go unnoticed by those unaffected. We will continue our implicit bias series because we have been committed to this series for a few years, but also because the Supreme Court has now approved the MCLE Board's CLE rule change to require diversity and inclusion credits in each CLE cycle. Feedback from these presentations so far has been overwhelmingly positive. This most recent session is available in our digital library.

Powerful as it was, the implicit bias session (and the current national civil unrest) inspired one of our session attendees to write this piece:

Implicit Bias

Deep down, well below consciousness, hidden with the other unarticulated and confused ideas that lie within my brain, I

am racist. I am sexist. I am ageist. I am elitist.

I won't admit I'm prejudiced to anyone. I don't feel particularly supreme in my whiteness. I wouldn't own a slave if it was legal to do so. I can sympathize with the poor and people of color. I think the Indians got a raw deal. I'll support police reform, universal health care, progressive ideas, and even the removal of those old Confederate generals, those traitors. But that's on the surface.

Below the surface lurks a person of entirely different character. He is me, except it's hard for me to recognize him. He's an oaf. He drools. He mutters. He acts like a perfect jerk. He is all ego, and he's greedy, angry, and incapable of any guilt or regret or reason.

The present challenge is to reveal him. Normal communication systems won't do it. Shame has a fighting chance, but it's not effective for the long run. What's needed is sunlight. I need to shine a bright beam into those dark places. I will have to admit things about myself I am not proud of. I have to link my brain with this monster, and tame him.

This won't be easy, and it won't be quick. I'll need to push him back whenever he leaks out. I'll need to recognize when it's he who is doing the thinking for both of us. I need to hold my tongue long enough to convert that ugly inner voice into words and sentences that are sanitized by reason and conviction.

He may never change. The battle to out him or cure him or kill him won't ever end. But in time the me that's outside will prevail. I'm committed to that.



WANTED: LEGAL FICTION

Fancy yourself a fiction writer? The next Grisham?

The *Vermont Bar Journal* is not just for scholarly legal dissertations!

Call it a fiction contest or an active solicitation for your works of fiction,

either way, if we love it, we may print it!

Submit your brief works of legal fiction (6,000 words or less) to jeb@vtbar.org.

Our next deadline is September 1, 2020.

BE WELL

Join me for Some Happiness Hacks this Summer

"Happiness is not a station you arrive at, but a manner of traveling."
~ Ellen Petry Lease ~

Happy Summer Everyone! We may be halfway through 2020, a year of hindsight that is propelling us all forward into a new mode of being, whether we like it or not! So, instead of allowing the drastic shifts in your life increase feelings of negativity, depression, anxiety or sadness, take charge of your mind and try these hacks to increase your overall feelings of Happiness, Joy, and Well-being.

These Happiness Hacks are based on science (links to all supporting articles are below) as well as my own experience embodying them since the WHO declared a Pandemic on March 11, 2020. So, join me in cultivating your own experiential wisdom about how to dramatically increase your feelings of happiness and joy, despite the state of the World around you. Then, your actions will come from a deeper place of intuitive wisdom and responsiveness, not negative reactivity. All of these activities stimulate the happiness centers of the brain and create at least one of the mood-boosting "happy" chemicals: serotonin, dopamine, and/or oxytocin to counteract and lower the levels of stress hormones in the body, including Cortisol. Additionally, they downregulate the nervous system from its active sympathetic nervous system state of **"DOING"** to the relaxing parasympathetic nervous state of **"BEING"**, which is where we **REST, DIGEST, and HEAL**.

So, join me for these Happiness Hacks this Summer as you conduct your own personal Happiness Experiments:

1. Get More Sleep!

Most humans need 7-9 hours of sleep each night, so do some experiments to determine when you operate optimally and try to go to bed and rise at the same time each day to lock in your sleep schedule.

2. Smile :-)

The simple act of smiling – even if you have to force it – activates the happiness centers in your brain.

3. Play or Interact With your Pet (or another's pet)



4. Cultivate Present Moment Awareness and Cultivate Faith and Hope

Practice Meditation or Prayer.

5. Engage in a Mindful Practice.

Movement, such as Yoga, Tai Chi or Qigong where you align your breath with your movements.

6. Help Others for 2 hours/Week OR Ask for Help.

Both actions stimulate oxytocin and reduce stress hormone levels.

7. Listen to Music and Sing Along.

Lengthened exhales stimulate the vagus nerve, which downregulates the nervous system to being more relaxed and calm.

8. Clean and Decorate Your Living Space.

Our living spaces are a reflection of our inner mental health. Perhaps buy flowers for yourself-- just the visual can boost your mood.

9. Move Your Body Outdoors.

Try to move your body 25-30 minutes each day out in the Sun to glean Vitamin D and endorphins. But pick something you enjoy doing, otherwise you will create stress hormones and counteract the positive effects!

10. Connect with Happy People and Those You Care About.

Not via texting or email, but through in-person contact (safely with a mask and 6 feet apart), a phone call or video connection via FaceTime, Skype or

Zoom. Individual happiness spreads through groups of people, and if they are geographically close, that has the greatest effect on happiness.

11. Practice Gratitude.

Just being grateful for what you already have will cause more things to arise to be grateful for! Try giving up your favorite things (coffee, wine, chocolate, Netflix), just for a day or two, NOT forever. This increases your enjoyment of it when you come back to it. You are able to find more happiness by practicing patience with the things you love.

12. Learn something new, even if it's stressful.

Stress now, happiness later! For example, my hiking training to Thru Hike the 273-mile Long Trail has been extremely challenging thus far hiking mountains with sunburn, insect bites, Elia experiencing heat stroke due to heat and humidity, and just the sheer toll hiking 9-20 miles a day has on the body. But I feel extreme satisfaction and joy at each individual accomplishment building my cumulative strength and endurance.

Activities that increase our competencies, meet a need for autonomy, or help connect us connect with others may have decreased happiness in the moment, but increased overall happiness on an hourly or daily basis.

13. Food that Increase Mood-Boosting Chemicals in the Brain:

a. Dark Leafy Greens, such as Spinach and Kale;

- b. Mushrooms;
- c. Smelling Citrus Fruits, either fresh or diffuse as essential oils;
- d. Healthy Whole-Grain Carbohydrates as an afternoon snack when serotonin levels drop;
- e. Add turmeric to your meal as curcumin is a natural antidepressant and is anti-inflammatory;
- f. Eat chocolate, poultry or eggs, which contain tryptophan, which boosts serotonin levels in your brain;
- g. Drink coffee;
- h. Sip on Green Tea;
- i. Consume Healthy Fats with omega-3 fatty acids, such as Salmon, Avocado, nuts, grass-fed beef, and chicken; and
- j. Try St. John's Wort.

14. Cultivate Self-Awareness and Self-Care.

- a. Invest in good therapy, it is 32 times more effective than cash at increasing your happiness.
- b. Engage in hobbies and carve out time to relax and do nothing.
- c. Embrace opposing feelings at the same time, such as Cheerful + Downcast = Happy. This ability detoxifies the bad experiences so you can find meaning in a way that supports your psychological well-being.
- d. Press pause on an extreme pursuit of happiness with its increased expectations. Instead, just find happiness calmly and rationally through your own daily "happiness experiments".
- e. Celebrate your strengths and recognize your weaknesses by focusing on being more of who you already are and putting energy into developing your natural talents.
- f. Keep your daydreams grounded as wild fantasies dull the will to succeed. Remain grounded, hopeful, and eager to see happiness in your future.

15. Prioritize Your Time and Money.

- a. Spend money on experiences, not things.
- b. Plan something fun on your calendar to look forward to in the future.
- c. Take micro-breaks in your day to watch a funny video.
- d. Prepare for the worst but hope for the best. In most situations, discover that your anxiety or your fears about those situations were exaggerated and now you feel more in control when you planned for all of the outcomes.
- e. Say "No" to almost everything, but frame as "I don't" (insert how you stay true to your own happiness), such as:

- i. I don't spend my time doing things that stress me out.
- ii. I don't spend time over-committing.
- iii. I don't have time to get less sleep staying out late.

*"We can have an understanding of yesterday, we can have a plan for today, and we can have hope for forever."
~ Tom Hanks ~*

Supporting Articles:

- Happiness Hack: 10 Ways To Be Happier, Backed by Science¹
- 25 (Scientific) Happiness Hacks²
- These 5 Activities Can Make You Feel Happier, According to Science³
- 8 Tips for Improving Happiness (That Actually Work)⁴
- Happiness Hacks: The 10 Most Unexpected Ways to Be Happy, Backed by Science⁵

**** ATTENTION: My Happy Human Projects website (<https://www.thehappyhumanprojects.com>) is up in an evolving state. Stay tuned for more resources and support ****

Virtual Classes

Mondays and Fridays, 12:00 – 12:30 pm, Mindful Practices for Stressed Humans (via Zoom)

These short 30-minute sessions will include various practices to reduce your overall stress response during these uncertain and challenging times. Mindfulness simply means choosing to be in the present moment without judgment. If you can learn these tools during moments of calm, you will be better equipped to meet any stressful situations that may arise in your life or the world. These sessions will guide you into using mindfulness tools to anchor you to the present moment, such as breath and body awareness. All practices can be done from your desk and require no special equipment, outfits or experience.

NOTE: Sign in early as the Zoom sessions are **limited to the first 100 participants.**

Join Zoom Meeting⁶
Meeting ID: 433 938 263
Password: 588354
Dial in for Audio only: (646) 876-9923

Wednesdays, 12:00 – 1:00 pm: Mindful Practices for Stressed Humans (via Zoom)

Similar to the 30 minute sessions above, these 1-hour sessions will include various practices, including simple physical movements, to reduce your overall stress response. All practices can be done from your desk and require no special equipment, outfits or experience.

NOTE: Sign in early as the Zoom sessions

are **limited to the first 100 participants.**

Join Zoom Meeting⁷
Meeting ID: 507 388 730
Password: 320887
Dial in for Audio Only: (646)876-9923

ATTENTION LAWYERS

Vermont Bar Association Wellness CLEs and FREE Mindful Moments

I have partnered with the Vermont Bar Association to create online Wellness Webinars every other week with opportunities to receive your mandatory Wellness CLE credits in a fun way. There will be alternating 30 minutes Mindful Moment sessions that are FREE and 60-minute sessions where you can receive 1.0 Wellness CLE and the cost is only \$35. **And once you pay \$35 for one CLE session, you get ALL REMAINING CLE SESSIONS FREE.**

Dates/Registration information below, with more dates being added in 2020:

- **July 23** - Mindful Moments for Wellness 30 minute FREE session, 12:00 – 12:30
- **August 6** – Mindful Moments for Wellness 1.0 CLE, 12:00 – 1:00, VBA members \$35, Non-VBA Members \$90 (LIVE WEBINAR)
- **August 20** - Mindful Moments for Wellness 30 minute FREE session, 12:00 – 12:30
- **September 24 (Post thru-hiking the 273-Mile Long Trail)** – Mindful Moments for Wellness 1.0 CLE, 12:00 – 1:00, VBA members \$35, Non-VBA Members \$90 (LIVE WEBINAR) REGISTER for all these programs on the VBA website CLE Calendar!

Samara Anderson is a Legal and Policy Advisor for the State of Vermont, Agency of Human Services, a Registered Yoga Medicine™ Yoga Teacher and a social entrepreneur teaching mindfulness to stressed professionals and creating a non-profit community farm in Vermont to use farm animals, nature and mindfulness to heal people. She co-chairs the VBA Lawyer Well-Being Section.

¹ <https://www.lifehack.org/articles/lifestyle/happiness-hack-10-ways-happier-backed-science.html>

² <https://www.cnn.com/2016/01/22/health/happiness-hacks/index.html>Hacks

³ https://www.huffingtonpost.co.uk/entry/5-science-backed-ways-to-be-happier-today-and-build-resilience-in-the-process_uk_5f02dda6c5b6ca970920c8d5?ncid=newsltushpnews&gucounter=1

⁴ <https://mindbody.io/blog/wellness/8-happiness-hacks-actually-work>

⁵ <https://buffer.com/resources/happiness-hacks-unexpected-ways-to-be-happy/>

⁶ <https://zoom.us/j/433938263?pwd=K2U2Rw5NRjU0SVkzMUhwRFVlUUVlUT09>

⁷ <https://zoom.us/j/507388730?pwd=Z1UrK2NP Tmh5UDlyMEsxbldDd0gxUT09>



VBF GRANTEE SPOTLIGHT

Have Justice Will Travel

In each issue of the *Vermont Bar Journal* we shine a light on a Vermont Bar Foundation grant recipient.

Have Justice Will Travel (HJWT) was founded in 1998 by Wynona Ward as a means to provide legal representation for victims of family violence. A few years later paralegal E. Robin Goodrum joined HJWT. Robin's support work has been so vital to the organization it became the Legal Empowerment Assistance Program (LEAP). The Vermont Bar Foundation's continued grant helps to provide significant support for LEAP.

The need for victims of family and domestic violence to access legal assistance is widespread. Domestic violence occurs across the full spectrum of our society, and regardless of geography or socioeconomic status. Robin became interested in assisting families affected by domestic violence as a result of her own life experience. She volunteered with her children's youth activities, and came to realize some of the children she regularly saw were exposed to, or victims of, violence in their homes. She began working professionally with families affected by domestic violence, and later went to Champlain College to become a paralegal. While at Champlain, Robin did an internship with Have Justice Will Travel, and has been with the organization ever since.

LEAP provides vital support to mothers, fathers, children, grandparents, and other family members who need on-going legal assistance, advice, and education throughout the development of their case. Long term direct services on a consulting basis are required if these disadvantaged Vermonters are to have meaningful and beneficial access to the legal system. Without LEAP, HJWT would undoubtedly be unable to serve as many clients as it currently does. HJWT has two attorneys – Wynona Ward in central Vermont and the Northeast Kingdom area, and Laura Savall in Bennington and Rutland Counties. The Southwestern Vermont office also has a paralegal, Kathleen Jahne. Robin is in frequent contact with Kathleen, providing guidance and support.

When a client contacts HJWT, Robin generally screens the initial call. She is able to determine the sort of assistance a caller may need. Some callers need support in representing themselves. In that case, Robin, in consultation with Wynona, is able to help that person think through their options and needs. They can assist the client with drafting documents and filling out necessary forms; helping the client understand each party's



The HJWT-LEAP team works with a client

rights, the legal process and the appropriate statutes; and preparing for conferences, hearings and mediations.

If it appears a case is headed for a final hearing, and if the client does not feel she or he is able to self-represent adequately, Wynona is often able to step in and assume in-court representation. At that point, the file is already well developed from Robin's work. Robin's assistance saves significant attorney time and allows the organization to assist more clients in need.

Recently LEAP has also supported clients in reaching stipulated agreements in some family court cases. This support empowers clients to reach agreements that are equitable and that reflect the realities of their own lives. It also saves them from having to participate in a final hearing. It can be stressful and intimidating for a victim of violence to feel she or he is alone going into a contested hearing before a judge.

HJWT receives over 1,000 calls for service per year. The organization receives calls from every county in the state. The calls often present with multiple complex issues, ranging from relief from abuse hearings, to criminal matters, probate issues, divorce and child custody, and even bankruptcy.

LEAP has also become very efficient in providing services. Robin frequently meets with clients via phone or video chat, and is able to help clients filling out forms electronically. This has drastically cut down the time she spends traveling between meetings, and has increased her ability to assist more clients over a wider geographic area.

The HJWT attorneys are not always avail-

able for every case. LEAP has worked to develop a network of attorneys in different areas of the state who may be able to handle limited pro bono appearances for clients. LEAP has also worked to form relationships statewide with domestic violence advocacy groups. Those groups are also able to help find attorneys where a limited appearance is beneficial to the client.

Periodically HJWT takes on legal interns for a summer or a semester. Interns work closely with LEAP, assisting with intakes and other advocacy. Hosting interns serves two important purposes. First, the interns can assist with client needs. Second, this experience can serve to expose law students to the need for increased access to justice with vulnerable populations. Because of their very limited staff resources, the organization generally does not hold community events or fundraisers.

Since HJWT is a nonprofit organization, it relies heavily on grant funding and funding from individual donors. LEAP receives support from the Vermont Bar Foundation and The Mill Foundation, as well as from the Lintilhac Foundation and The Vermont Women's Fund in the past. HJWT also receives grants from additional sources for other programs.

Without the Vermont Bar Foundation's continued generous support, far fewer underserved, Vermont families and victims of domestic violence would have access to legal assistance.

Elizabeth Kruska is the President-Elect of the VBA and serves on the VBF Board.



Of Flying Pigs, a Comedy Diva and a Development Director for the Vermont Bar Foundation

Your Vermont Bar Foundation (VBF) is pleased to announce that Grand Isle resident Josie Leavitt has enthusiastically accepted the position of VBF Development Director. If you already know Josie, I will wager that you are aware of what a perfect fit Josie is for the VBF. If you do not yet know Josie, get ready to encounter a wonderful and talented human being.

Josie has come to us at the right time and after a lengthy and, ultimately, successful search. For years, VBF Executive Director Debbie Bailey and the VBF Board have recognized that supporting access to justice on a sustained year in and year out basis requires the attention, knowledge and diligence of someone who is specifically dedicated to the task. This is true now more than ever as we look ahead from COVID-19 to what will surely be a fluctuating period of general decline in the VBF's principle revenues earned from the interest on our IOLTA accounts. As a profession with a collective conscience, we all need to insure that people have access to the courts and that our legal system functions to protect the rights of those needing its protections. Josie is someone with a heartfelt connection to this mission and she has the communication skills to convey the message to others.

Josie has led a vibrant life and there is no reason for her to stop now. She is a graduate of Columbia University where she earned her MA in Teaching of English in secondary education. She was co-owner and founder of the Flying Pig Bookstore in Shelburne until her retail retirement in 2016. Josie is also a stand-up comic getting her start in NYC in 1992. Since arriving in Vermont she has won multiple Seven Daysies for best comic. As a storyteller she won a Burlington Moth StorySlam event in 2014. Recently, she worked as the Development



Director at the Pride Center of Vermont and she has volunteered for numerous organizations over the years including the Charlotte Planning Commission and the Charlotte Rescue Squad. There is much, much more but I will leave it to you to get to know her in the years to come.

Please join me in welcoming Josie to the VBF and feel free to reach out to her by email at j.leavitt@vtbarfoundation.org. I have no doubt that you will be hearing from her in the very near future. Josie has already shown that she is a tireless advocate for the people of our State. She will just as surely be a tremendous ambassador for the VBF.

Jim Carroll, Esq. is the current president of the VBF Board. He has an active private practice in Middlebury.



Notice of MCLE Change

The Vermont Supreme Court has approved revised Rules for MCLE which went into effect July 1, 2020. The full text of the rules are available on the Vermont judiciary website. Notable changes include the ability to carry over excess credits from the second year of reporting, an increase in required credit hours for the 2-year period from 20 to 24, a revised definition of 'self-study' programs, which are limited to 6 of the 24 hours and the addition of a required credit hour of attorney wellness programming and a required credit hour of diversity and inclusion programming.

Of course the VBA will continue to provide quality live programming, including the over 40 hours of live webinar programming we have provided since May! We will have a full slate of live webinars in the fall as well. But if you need those 'self-study' (non-moderated without interactivity) hours or your wellness and diversity hours, we've got you covered.

Some of our newest titles include areas such as:

- Cannabis Business Law
- Food & Beverage Law
- Bankruptcy: Intersection with other Practice Areas
 - Implicit Bias
- Employment Law (3): Immigration, Hiring & Bostock
- Land Use & Dam Safety
 - Foreclosure Defense & Mediation
- Administration Law
- Professional Courtesy
 - Mindful Practices for Attorneys
 - Virtual Practice

There is surely something for everyone so visit our Digital Library today, under the CLE/Events tab at www.vtbar.org.

VBA CONNECT

Your Legal Community Resource -- Share, Learn, Stay Connected

Share Collective Wisdom Today!

Passive Management: Is Anyone Actually Steering the Ship?

I have worked with over one thousand law firms over the years and it certainly seems to me that a number of smaller law firms around the country are being passively managed. Is this a problem? Well yes, it very well could be.

Now I define passive management as reactive decision making or making decisions only when absolutely necessary. Often in such firms the managing partner is serving on a part-time basis without compensation and their primary responsibility is to address staff related issues and administrative functions when deemed necessary. The reality is that in a firm being passively managed no true firm leadership exists. From a business perspective, no one is steering the ship.

This seems to be particularly true in smaller firms for any number of reasons. The managing partner may have concerns over how his or her actions may be perceived by the other partners. Such concerns might be a fear of be perceived as playing favorites, as being overly protective, or unduly harsh. Other managers avoid tough decisions altogether perhaps with the naive hope that the problem will eventually go away if it is ignored long enough. Heaven forbid anyone ever question the propriety of a decision! Sometimes the underlying problem may be as simple as a fear of jeopardizing the partner-to-partner friendships that originally brought the group together. Of course there will always be those few who simply have no idea what to do with the problem at hand. Worse yet are those situations where the entire group of attorneys decides to manage by consensus. This is the ultimate when it comes to the lack of a ship's captain because in these firms decisions are made at the speed of molasses if they are made at all.

There is a downside to passive management due to associated malpractice concerns and this is where the problem lies. Consider a situation where a partner is seriously depressed as a result of going through a difficult divorce. As this divorce drags on financial pressures mount and the attorney begins to demonstrate a growing reliance on alcohol. Now personal friendships and even loyalty come into play and this attorney, who may be developing a true impairment, receives support from his peers at the firm. Although personally supporting this attorney through a personal crisis is admirable and quite appropriate, if

the professional side of this personal crisis is not also responsibly managed malpractice claims can and will arise. For example, should this attorney's files be reviewed or his calendar checked once any warning signs start to appear? That would seem prudent given that impaired attorneys often end up neglecting client matters; but this often won't happen in a passively managed firm.

As the above demonstrates, one real risk of passive management is in a firm often failing to proactively address the professional side of any developing crisis. Yes, when faced with a malpractice claim most of these firms respond by having management in whatever form it exists step in; however it is often too little, too late. The unfortunate outcome ends up being a change in the makeup of the firm and this change is not always limited to the firm divorcing itself from the problem attorney. Accountability for the situation naturally falls on the managing partner, which can result in a firm split or dissolution.

In contrast to this, actively managed firms are proactive and they take additional steps in an attempt to prevent possible claims from arising. In response to the situation described above an actively managed firm might conduct file review at the first sign of trouble, perhaps assign a mentor, or the attorney of concern could be granted a temporary reduction in workload until he gets his life back on track. These ideas are reflective of methods that would professionally support an attorney who is struggling. If substance abuse, as an example of a full-blown impairment, becomes a known and legitimate concern, additional steps such as requiring successful completion of an addiction treatment program as a necessary condition of remaining with the firm become essential. Certainly this is a more difficult road to go down; however the hoped for outcome would be to maintain the overall integrity of the firm coupled with the eventual recovery and retention of a valuable firm asset, the subject attorney himself.

If certain aspects of a passive management style exist at your firm, consider strengthening your firm's management and leadership capabilities. Steps that might be taken include formalizing a management position by creating a job description and having an open and honest discussion about the degree of authority that will be

given to this individual. As part of this process also make certain everyone agrees to respect that authority whenever it is exercised. A firm should always recognize the importance and value of the management position, whether full time or part time, with an appropriate level of compensation. Consider management training if no one at the firm has a complete set of management skills. There are resources available at a variety of price ranges from well-written books to intensive off site courses that last several weeks. If no attorney at the firm has an interest in managing the firm, consider hiring an experienced manager and, again, make certain to give this individual the necessary level of authority to fulfill his or her duties otherwise it's just going to be wasted time, energy, and money.

I am a firm believer in having strong leadership and effective management within organizations. Within the law firm setting not only will this contribute in lowering exposure to malpractice claims, but I also believe that it will significantly impact any firm's financial bottom line in the most positive of ways. That said, remember this. According to our ethical rules we are our partner's keepers and when it comes to the success or failure of the business, firm attorneys will sink or swim together. Isn't the better option to have someone actually in charge of steering the ship if for no other reason than to try and avoid ever having to sink or swim together? Personally, I'd rather be on the ocean than in it. How about you?

ALPS Risk Manager Mark Bassingthwaite, Esq. has conducted over 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management and technology. Check out Mark's recent seminars to assist you with your solo practice by visiting our on-demand CLE library at alps.inreachce.com. Mark can be contacted at: mbass@alpsnet.com.

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Lawyer Well-Being



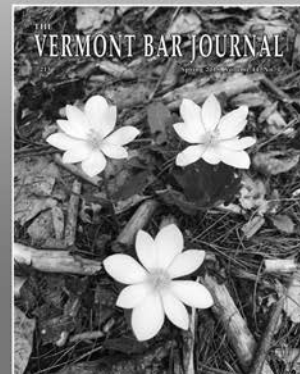
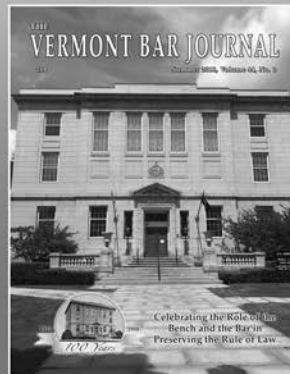
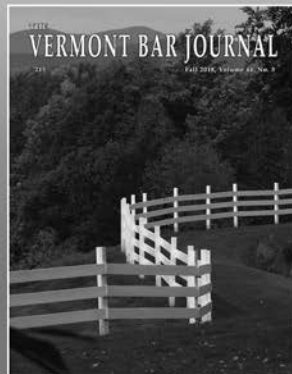
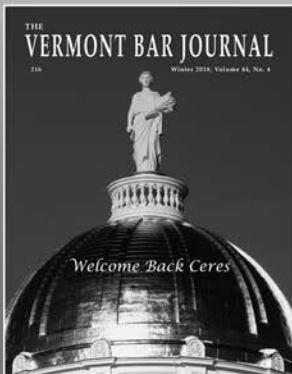
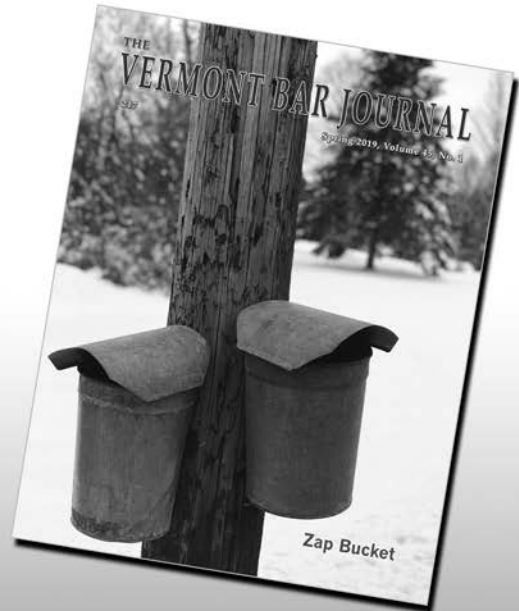
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The Stenographer's Dilemma: The Importance of a Valid Oath

I have been a stenographer in Vermont for more than 20 years. As a result of the COVID-19 pandemic, I have observed a rise in deposition practices that could sabotage a case in court. When attorneys arrive to a deposition, it is ordinarily a given that before testimony begins, the witness will be placed under oath. It is also a given that the officer, most likely a stenographer, has the legal authority to administer a valid oath obligating the witness to tell the truth, subject to the penalties of perjury or—more likely—impeachment on cross examination at a subsequent trial. But what happens if the oath is invalid? How can that even happen?

Stenographers have had to adapt rapidly to the dramatic increase in remote depositions. These changes have underscored how easy it is to end up with an unsworn deposition. Up until about ten years ago, almost every deposition in Vermont was taken before a Vermont stenographer. Each law office or governmental entity had their go-to firm or independent stenographer, and in most cases, everyone knew who was sitting in the stenographer's chair. Attorneys and legal staff even knew the stenographers who were not their go-to, as they were generally familiar with the stenographers who covered Vermont depositions.

About a decade ago, large, private equity court reporting firms started popping up around the country. Initially, these firms contracted with insurance companies, mostly working with defense attorneys. Often, these firms do not have any stenographer employees at all, let alone stenographer employees in the State of Vermont. Because attorneys were used to hiring their go-to local stenographers, they often called on known stenographers to take depositions in various parts of the country without first asking whether they were a valid Notary or otherwise authorized to administer an oath in another jurisdiction. Likewise, the private equity firms largely ignored the Notary laws in each state, and even some stenographers just assumed that they could administer a valid oath in other jurisdictions.

To further complicate matters, the large court reporting firms without stenographer employees started a marketing campaign instructing attorneys to change their deposition notice language to permit depositions to be taken by means of digital audio, as opposed to stenographic means. Thus, if they did not have a stenographer to cover

a deposition in a given location, they could send someone with a recording device. This means that not only are national companies hiring stenographers without questioning their authority to administer a valid oath in a given jurisdiction, they are also sending non-stenographers, with or without authority to administer a valid oath to record deposition testimony. The result is that many oaths administered at depositions are, in fact, invalid, and the testimony is technically unsworn. In addition, the transcript is less likely to be accurate under these circumstances, and may include hidden costs.

It is worth explaining the distinction between stenographic and non-stenographic methods of transcription, because it is not immediately obvious. When a stenographer takes deposition testimony, they are making a transcript in real time, using highly technical software that allows immediate, on-the-spot translation, as well as backup audio. Stenographers are often nationally and/or locally certified and have taken mandatory continuing education courses. They understand the importance of the record, including exhibit organization. Stenographers toil over proper grammar, punctuation, and spelling. They research the names, companies, procedures, and obscure terminology particular to a case. They understand that they need to produce an accurate, usable transcript to all of the parties in a timely basis.

Digital recorders on the other hand are generally not a regulated profession. They record audio of the proceeding, often making notes along the way to be referenced by a transcriptionist (in some case many different transcriptionists) hired after the fact to produce a transcript. These digital files are often broken up and dispersed to multiple individuals in different locations and may produce a disjointed final product with varying levels of accuracy and overall quality. The security of the files and the information within them is often unknown as they pass through many different electronic end points, creating a greater likelihood of security breach. Audio files can also more easily be manipulated or corrupted. Contrary to popular belief, producing transcripts in this manner is often not cheaper, especially if you receive an unusable transcript rife with errors or "inaudibles."

Turning back to the new challenges created by the current COVID-19 crisis, as law offices and courts closed, stenographers across the country scrambled to keep the

workflow going. I took the logical step of contacting the Vermont State's Secretary of State Office directly for clarification on validly administering remote oaths and, as it was not permitted under the existing rules, sought an emergency order to allow it. Many states across the country—including Vermont—quickly modified their Notary rules to permit remote administration of an oath. As powerful and advantageous as those changes have been to keep the wheels of justice moving and keep lawyers and stenographers working, it has brought with it its own set of issues and uncertainty. Many stenographers, including large corporate court reporting firms, have interpreted emergency orders in their states as the green light to cover work across the country remotely without regard to federal and local rules of procedure and local Notary laws. It is not that simple.

The issue of the validity of oaths administered remotely quickly became a topic of discussion on many stenography social media sites as the in-person work dwindled and we all went remote. Several times a day posts included some variation of "I live in [State]. I got a phone call to cover a deposition in [another State]. I can cover it; right?" This immediately raised red flags. As stenographers, one of our top priorities is to uphold the integrity of the record and ensure that we provide an end-product that is admissible at trial. That requires administration of a valid oath. As a stenographer, I take that responsibility seriously.

I read the federal and local rules along with the Notary laws that apply to me. And while they seemed clear and obvious to me, other stenographers reading the same material did not have the same opinion on this subject as I did. And for valid reasons. We are not attorneys and we are not trained to interpret the rules. The most frequent issues involved variations on the following: *what if venue is proper in my state and the witness is out of state? What if my state gives the authority to swear a witness in by license and not a Notary? Does that mean my license which gives me the ability to swear someone in in my state is valid in other states? Where does the deposition actually take place? Can the attorneys stipulate that I am authorized to swear in a witness?*

After weeks of combing over laws and rules, I decided that I needed to ask a professional to set this all straight for me. I contacted Merrill Bent, Esq. of Woolmington, Campbell, Bent & Stasny, P.C. in Manches-

ter, VT. After explaining what I call "The Stenographer's Dilemma," here is what Merrill had to offer:

I. Cases Pending in Federal Courts

a. Interpreting the Federal Rules

Under Federal Rule of Civil Procedure 30(b)(5)(A), a deposition must be taken "before an officer appointed or designated under Rule 28," unless the parties stipulate otherwise. In Federal Court, the general rule regarding who may administer oaths is set forth in Federal Rule of Civil Procedure 28(a), which authorizes administration of oaths only by "(a) an officer authorized to administer oaths either by federal law or by the law in the place of examination" or "(b) a person appointed by the court where the action is pending to administer oaths and take testimony." Therefore, in federal cases, attorneys often have to consult the rules in the state of examination to determine who may administer an oath.

"Officer" is defined as "a person appointed by the court under this rule or designated by the parties under Rule 29(a)." F.R.C.P. Rule 28(a)(2). Although the term "officer" includes persons to whom the parties stipulate pursuant to Rule 29(a), Rule 28(a) still requires that the officer either be "authorized to administer oaths either by federal law or by the law in the place of examination" or expressly "appointed by the court" to administer a valid oath in a given matter pursuant to 28(a)(1)(B). *Lagnese v. Town of Waterbury*, 2015 WL 7432318, *1 (D. Conn., Nov. 23, 2015) (holding that under Federal Rule 28(a)(2), an "officer" may include persons appointed by the Court or designated by the parties, but that in either case for the oath to be valid the officer must be authorized to administer oaths).

Rule 30(b)(4) permits remote depositions but specifies that "the deposition takes place where the deponent answers the questions." This means that an oath is valid only if taken in conformity with the law governing administration of oaths in the jurisdiction in which the witness is located.¹ In the case of a Vermont witness, notaries and justices of the peace are authorized to administer oaths (12 V.S.A. § 5854),² and thus the validity of the oath will most likely be controlled by Vermont's notarial laws or the rules pertaining to justices of the peace.

Absent special appointment, Vermont law prohibits out-of-state notaries from remotely administering oaths in Vermont. The Emergency Rules for Notaries Public and Remote Notarization promulgated by the Vermont Secretary of State ("Emergency Notary Rules") in response to COVID-19 requires that both the notary administering the oath (who must be a Vermont notary) and the person to whom it is admin-

istered must be physically located in Vermont, and the person giving the oath must verify the location of the witness. Emergency Notary Rule 2(d) expressly states that "Each Remotely Located Individual and the notary public must indicate that they are physically located in the State of Vermont." Emergency Notary Rule 1(b) clarifies that "the Remotely Located Individual, and the notary public must both be located in Vermont when the Remote Notarial Act is performed." Of course, a notary administering an oath pursuant to their authority under Vermont law must also adhere to all applicable Vermont notarial rules, as they may be amended by the Emergency Notary Rules.

Read together, the Federal Rules provide that an oath is invalid unless (1) the presiding Court expressly authorized the person administering the oath to do so in the particular matter pursuant to 28(a)(1)(B); or (2) the oath was administered by someone authorized to administer oaths in the state in which the witness is located. In other words, even where parties stipulate that a particular person will take the deposition, the stipulation does not validate the oath where it does not independently comply with the mandates of Rule 28(a). In essence, the parties would be stipulating that the deposition will not be administered under oath in conformity with the Rules and, as a result may be considered unsworn (although it may nonetheless be considered admissible as though it were a statement under oath under the Rules).

b. Cases Interpreting the Federal Rules

The United States District Court for the Eastern District of New York has interpreted F.R.C.P. 29 to require the court to specifically authorize a stenographer to administer an oath to a witness located out of the jurisdiction in which the stenographer is so authorized for the oath to be valid under the Rules. *Hudson v. Spellman High Voltage*, 178 F.R.D. 29, 32, (E.D. N.Y. 1998). This is consistent with a Reporter's Note to F.R.C.P. 28, which explains that the alternative pro-

vision permitting "appoint[ment] by the court" under Rule 28(a)(2) is intended to:

Provide[] for the situation, occasionally arising, when depositions must be taken in an isolated place where there is no one readily available who has the power to administer oaths and take testimony according to the terms of the rule as originally stated. In addition, the amendment affords a more convenient method of securing depositions in the case where state lines intervene between the location of various witnesses otherwise rather closely grouped. The amendment insures that the person appointed shall have adequate power to perform his duties. . . .

F.R.C.P. 28, Reporter's Note (citing *Consolidated Fastener Co. v. Columbian Button & Fastener Co.*, C.C.N.D.N.Y.1898, 85 Fed. 54; *Mathieson Alkali Works v. Arnold, Hoffman & Co.*, C.C.A.1, 1929, 31 F.2d 1).

Problems most often arise where the parties' stipulation is not formally reduced to writing, or where the parties are not aware of the status of the court reporter's authority in the state in which the witness is located. As recently as May 4, 2020, a federal court confirmed that the best practice under Federal Rules 28, 29, and 30—even in the time of social distancing—is for the parties to obtain prior court approval on a case-by-case basis for the appointment of a court reporter who is not authorized under the jurisdiction in which a witness is located. *North Carolina State Conference of NAACP v. Cooper*, 2020 WL 2113460, *5, n. 4 (M.D. N.C., May 4, 2020) ("the Court hereby appoints any person regularly engaged in stenographic court reporting and selected by the party noticing a deposition **in this matter** to administer oaths remotely and to take testimony remotely for any deposition **taken in this matter**." (emphasis added)). Furthermore, that Court required the person administering the oath to be someone regularly engaged in stenographic court reporting (as opposed to one who takes testimony by means other than stenographic court reporting). *Id.* The Court also



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required that the remote deposition comply with the rules governing court reporters in the state in which the deposition is taken. *Id.*

A 2009 case in the United States District Court for the District of New Jersey invalidated a deposition as “not given under oath” because “the court reporter who administered the oath to Plaintiff at his deposition on March 31, 2008 and April 1, 2008 was not authorized to administer oaths in the State of New Jersey or under federal law at the time of the deposition,” and therefore “did not satisfy the technical requirements of Rule 28.” *Williams v. Correctional Medical Services, Inc.*, 2009 WL 10690508, * 1, 2 (C.D.N.J. Jan. 30, 2009). The Court deemed the deposition to be “unsworn,” and rejected the Defendant’s request to dispense with the oath requirements of the Federal Rules, citing a number of federal cases across the country in which courts reached the same conclusion. Many of the cited cases resulted in courts rejecting efforts to admit deposition transcripts because they did not adhere to the requirements of F.R.C.P. 28(a). In other words, the attorney was left without a transcript admissible at trial under the Federal Rules of Civil Procedure.

Such rulings have resulted in trial delay for the purposes of re-taking the deposition—an outcome that could result in liability to the unauthorized person who administered the oath, assuming that they failed to disclose their shortcomings of their authority in a given jurisdiction at the time of hiring. In *Williams*, the Court considered sanctions on the party who hired the unauthorized court reporter, but ultimately declined to impose sanctions because the attorney was not aware that the court reporter did not hold a New Jersey reporting certification. Had sanctions been imposed, it could have added to the unauthorized reporter’s liability.

Some courts addressing similar scenarios have decided that, although depositions taken by an unauthorized court reporter are “procedurally flawed,” such depositions may nonetheless be admitted into evidence if there is no prejudice to the parties. As previously indicated, many decisions have turned on whether a Rule 29 stipulation was reduced to writing by the parties. See, e.g. *Continental Illinois Nat. Bank & Trust Co. of Chicago v. Caton*, 130 F.R.D. 145, 138 (D. Kans. 1990).

Although the *Williams* case did not involve a stipulation pursuant to F.R.C.P. 29, it is nonetheless instructive and cautionary because neither party was aware that the person taking the deposition was not authorized to give an oath in the jurisdiction in which the witness was located. To reduce the likelihood of a procedural defect and resultant liability, the best practice is

to confirm that the parties obtained prior authority from the court hearing the case with respect to any departure from the procedural rules concerning depositions and/or oaths (preferably in the discovery stipulation). At the very least, a court reporter administering an oath to a witness outside of his or her jurisdiction should confirm on the record that the parties have stipulated that the deposition need not comply with the Federal Rules, and that both parties are aware that the reporter is not authorized to give oaths in that jurisdiction, and that the deposition may be considered unsworn. Because many attorneys will be uncomfortable with such a proviso, advance attention to the issue is also prudent to avoid a last-minute cancellation of the deposition, which also could result in liability to a party or to the unauthorized court reporter.

II. Vermont State Cases

For examinations conducted in Vermont, the Vermont Rules of Civil Procedure provide that oaths must be taken before a Vermont justice of the peace, a notary public, or a person appointed by the court. V.R.C.P. 28(a)(1). Parties to a Vermont state-law case may stipulate to deposition taken by telephone or other electronic means. V.R.C.P. 30(b)(7). Under this rule, “a deposition taken by such means is taken at the place where the deponent is to answer questions,” which means that for witnesses located in Vermont the Vermont notarial laws govern the case. Under Vermont law, an oath must be administered in the physical presence of the notary. That said, Emergency Judiciary Administrative Order 49 (“AO 49”) (as amended) and the Emergency Notary Rules promulgated by the Vermont Secretary of State (as amended) temporarily permit Vermont notaries to administer remote oaths where specific requirements are satisfied.

For depositions, the administering person must be able to see and hear the deponent and must be able to make a positive identification. (Judiciary AO 49 – 17(b)). The Notary Rules also require that both the notary and the deponent be located in the State of Vermont for the oath to be valid. (Emergency Notary Rule 2(d)). The notary must also verify the identity of the Remotely Located Individual by one of several means specified by the rule. (Emergency Notary Rule 2(c)(iii)). The notary is also required to record the administration of the oath in real-time, and to preserve the recording for seven years. (Emergency Notary Rules, 1(a); 2(a), (e)). *This is not an exhaustive recitation of the rules Vermont notaries are required to follow; it is intended to be illustrative only.*

Finally, for depositions of witnesses outside of the State of Vermont in a Vermont

state case, “depositions shall be taken before an officer authorized to administer oaths by the laws of the place where the examination is held or of the United States, or before a person appointed by the court in which the action is pending.” V.R.C.P. 28(a)(2). So if the examination is conducted outside of Vermont, the validity of an oath is governed by the state law in which the witness is located.

III. The Requirements Vary by State

Because each state rule may be different, it is important to verify the authority of a person administering an oath in each instance. The State of Washington, for example, requires oaths must be administered by a reporter authorized in the State in which the examination is held (or by appointment of the court in which the action is pending). Wash. CR 28. Kentucky state law on the other hand, authorizes any court reporter or notary in any state to administer an oath, whether the examination is within or outside of that state. Ky CR 28.01, 28.02. Each state is likely to have a variation on the rule, so the best practice is to consult the rules in the state of examination, and then confirm with a reporter that they are authorized to administer an oath under those rules.

Bottom Line...

Caveat Emptor. Attorneys should be aware of who is administering oaths for your proceedings. It is prudent to ask your deposition officer about their credentials to ensure that the oath is valid—and by extension, that the deposition transcript the client is paying for will be accurate and admissible in court without dispute.

Dineen Squillante is the principal of Double D Reporting in Arlington, Vermont. Dineen has been a stenographer for more than 20 years, covering Vermont, New York, Massachusetts, and Rhode Island. <http://www.ddreporting.com/>.

Merrill Bent is a Director at Woolmington, Campbell, Bent & Stasny, P.C. in Manchester, Vermont, where she has practiced law for 7 years. Prior to joining the firm, Merrill was a judicial clerk at the Appellate Division in Albany, New York.

¹ Because most stenographers and court reporters administer oaths under authority granted under state law; this Article does not address authorization to administer oaths under federal law.

² Notably absent as a category of official authorized to administer oaths is law enforcement. This raises the question of the validity of “sworn” statements taken by law enforcement, but not otherwise affirmed before a notary public, however this is a topic that would require another entire article to address.



A Vermont L3C in Africa Thanks to Vermont Legislation and Vermont Law School Alumni

In 2008, Vermont became the first state to legislate into existence the “low-profit limited liability company,” or L3C.¹ An L3C is a for-profit company focused on a socially beneficial mission. Unlike most for-profit companies with a fiduciary obligation to maximize returns for investors, an L3C views profit as “a secondary goal,” according to CNN Money.² “We’re trying to create an LLC whose very DNA insists that it has to put its beneficial activities in front of making money,” says Robert Lang, one of the original architects of the L3C concept.³

The concept has not been without controversy. For example, in an article in the Vermont Law Review, a Colorado attorney and the dean of Drake University Law School argue that “a funny thing happened on the way to the L3C party. Congress has not enacted L3C tax legislation, and substance and form have not aligned. ... Therefore, we conclude that the L3C is a business entity device before its time, a time which likely will never come.”⁴ (It is difficult to perceive the difference, in this regard, between an L3C and any state-created non-profit organization, as foundations and other donors can only rest easy in making “tax-deductible” donations if the donee has the concomitant federal 501(C) (3) or similar status.)⁵

The authors brush aside any other motivating factors for creation of an L3C, resting on the *ipse dixit* assertion that these are nothing but “rear-guard attempts to justify an organizational structure that cannot be justified on its primary, tax-oriented grounds.”⁶

This presupposes that an L3C is simply the umpteenth tax-avoidance device to come down the pike with a feel-good label attached. In fact, however, the entity offers a substantive benefit irrelevant to tax avoidance: freedom from a fiduciary obligation to maximize profits. Further, as a for-profit company, an L3C is also suited to regular investments, thereby accommodating investors who seek some return, but not at the price of social injustice.

A Case In Point

An extraordinary Vermont L3C in South Africa illustrates the benefits of this entity. Memel.Global is focused first on empowering women and girls

to transform their community and meet social needs ... while supporting health, primary education, sports, and the arts.

The employment and economic needs of the community are addressed with jobs training, use of new building techniques ... introduction of new agricultural practices, establishment of new private-sector enterprises, and the development and promotion of ecotourism.⁷

What does all that look like on the ground? How about this ...



instead of this:



Apartheid was abolished only in 1994. Zamani, in the Free State Republic, is a hold-over from the apartheid era, when it was illegal for blacks and coloreds (Indian or mixed-race people) to own land, to vote, or even to be in white towns without a permit. Overcoming this type of oppression is, of course, a multi-generational effort. About 6,500 black residents -- primarily Zulus and Sotho peoples -- live in Zamani. Unofficial estimates put the local unemployment rate up to 75%. There is insufficient water and electricity. Few homes have flush toilets or connection to a septic or sani-

tation system, which results in significant ground and river pollution. Due to the high rate of HIV/AIDS (nearly half of local deaths are AIDS-related), many households are headed by grandmothers. Lack of access to arable land, and seasonal droughts, cause many hardships for a majority of families, making food security an issue. The children of Zamani have many barriers to overcome as they go through primary and secondary education. Few make it to college, regardless of their intellect and talent.⁸

Directly across the river from Zamani is the white town of Memel with about 600-700 people, with its municipal services, attractive school campus, broad streets, and private tennis club. The residents of Memel rarely if ever venture the mile or so into Zamani.

Enter two Vermont Law School graduates, Cynthia Burns and Steven Ablondi.

Mr. Ablondi enjoyed a successful career in business and real-estate development in New England before founding Memel.Global. In addition, he worked in a number of capacities with the United Nations and non-governmental organizations, and lived for several years in various African countries, including South Africa. Together with his wife, Cynthia Burns, he served in humanitarian operations in Cambodia, Bosnia, and central Africa.

Cindy Burns was awarded the VLS Social Justice Alumni Award in 2019. Ms. Burns spent the better part of her professional life working in refugee camps around the world for the United Nations High Commission on Refugees (“UNHCR”), which is based in Geneva. Her stints in high-conflict area refugee camps from the 1980s onward include: the Cambodian/Lao/Vietnamese camps on the Thai-Cambodian border; the Khmer Rouge, FUNCINPEC and KPNLF camps where she developed and instituted the first Human Rights training program for Cambodians, on behalf of the UNHCR; the joint UN/OAU mission MICIVIH in Haiti, where she worked on the design of a human rights training program for Haitians preparing to accept their newly elected president;⁹ and Sarajevo, in the heart of the Bosnian war, where the UNHCR kept millions of Bosnians, Serbs and Croats alive.¹⁰

Reassigned from Sarajevo to South Africa for what was considered to be a respite from working in war-torn communities, Ms.

Burns grew restless at her desk job as a regional training officer. Instead, she volunteered to go on mission to post-genocide Rwanda where she stayed for three years. As the Assistant Representative of UNHCR, she was responsible for organizing the repatriation of thousands of exiled Rwandan refugees from Uganda, the Congo, Tanzania and Burundi. In the process, UNHCR built over 100,000 houses for the repatriates, to reduce the chances of further intertribal violence. Her other posts include Iraq, Afghanistan, Pakistan and Jordan to prepare for the expected return of hundreds of thousands of Iraqis dispersed throughout the region and Uganda. Ms. Burns has retired now from her role as Senior Policy Advisor to the United Nations Refugee Agency, and has "retired" to South Africa. There she continues her work through Memel.Global and its affiliate, SheWinS, a Vermont LLC.

Together, Mr. Ablondi and Ms. Burns have transformed life for many people in Zamani, through symbiotic programs that nourish, teach, inspire and provide hope.

According to Dr. Roger Weeden, a scholar of organizational behavior:

An L3C can help foster via policy, orientation, mentor/peer relations ... and more. ... The culture of the organization is often driven by its leadership and sets the tone for the behavior. Contextually, you may find a slight variation based on personnel sought, the mission of the organization and more. Given that a[n] L3C spans between profit and not-for-profit, it can allocate a percentage (small or large) to the leadership [with the] remaining [] reinvested or driven towards the mission.¹¹

Thus, the L3C structure serves as a way to support the boots-on-the-ground activists (who often risk their lives, depending on the setting), as well as the programs they create.

As of this writing (June, 2020), related work in Zamani includes an educational initiative by Isaac Mafanela, Head Coach for the SheWinS soccer programs. Mr. Mafanela has launched the Digi-Tech Programme in Zamani, and is offering free workshops, classes and hands-on instruction to acquaint the children and young people of Zamani with computers and the internet. The content extends well beyond simply being introduced to computer technology, however. Its span of topics include cybersecurity, leadership, self-knowledge, lifelong learning, and financial literacy. The Digi-Tech Programme has caught the eye of national leaders, and is being considered for inclusion in the public-school curriculum on a national basis.

In March, 2020 volunteer dancers from the Joffrey Ballet in New York spent time in Memel teaching Zamani children the basics of ballet -- and perhaps learning a bit about Zulu dancing, as well. At present, volunteers at Dartmouth's Tuck School of Business MBA program are working with Memel.Global on visions for business development. Martin Havlovic, an agricultural economist at the University of Wisconsin Extension and former Chair of the Department of Community Development there, visits Memel and the surrounding areas providing expertise on soil types, organic gardening, and establishment of commercial aviaries. Architectural, legal and medical expertise have been donated, both in-kind and in the form of cash donations.

Countless Zamani girls have raised their math scores in school through the simple expedient of obtaining free sanitary pads from SheWinS (which they help make themselves), thereby avoiding the ban on menstrual bleeding in public. (It's difficult to keep up with math when a girl is kept out of a school one week a month.)

These are only a few examples of the extraordinary work done by a handful of people, white and black and colored, most of whom had never heard of Vermont until one couple decided to change a village, rather than the world.

So, before we write off LC3s as a non-starter in the wonderful world of tax reduction for the wealthy, perhaps we ought to take a closer look at a small township in Africa and see whether L3Cs might in fact be an attractive investment vehicle for both dollars and spirit.



Author with friends (mostly refugees from Zimbabwe) in Memel, South Africa, January 2020. Right of her in photo is Bright Mariko, Head of Construction for Memel.Global.

For information on ways to get involved, please go to <https://memel.global/contact/>.

Liza Chalidze practiced law in Vermont for thirty-four years. She is currently a Research Fellow for the Peace and War Center at Norwich University, and serves on the Board of Directors of SheWinS and the Andrei Sakharov Foundation. She also works

as a Consultant to the National Parliamentary Library of the Republic of Georgia on rule-of-law and human-rights issues.

¹ 11 V.S.A. secs. 4161-4163, as amended.

³ https://money.cnn.com/2010/02/08/small-business/l3c_low_profit_companies/ (last accessed on 12/18/2019).

³ As quoted in *id.*

⁴ Callison, J., and Vestall, A., *The L3c Illusion: Why Low-profit Limited Liability Companies Will Not Stimulate Socially Optimal Private Foundation Investment In Entrepreneurial Ventures* (2018), 35 V.L.R. 273, 274.

⁵ To keep their tax-exempt status, foundations have to direct 5% of their assets annually to charitable purposes. One way of doing this is through a "program-related investment," or PRI. An L3C can serve as a PRI investment. In case of uncertainty, a foundation may always seek an IRS ruling letter. In addition, the IRS has since expanded its examples of acceptable PRIs: (1) An activity conducted in a foreign country furthers an exempt purpose if the same activity would further an exempt purpose if conducted in the United States; (2) the exempt purposes served by a PRI are not limited to situations involving economically disadvantaged individuals and deteriorated urban areas; (3) the recipients of PRIs need not be within a charitable class if they are the instruments for furthering an exempt purpose; (4) a potentially high rate of return does not automatically prevent an investment from qualifying as a PRI; (5) PRIs can be achieved through a variety of investments, including loans to individuals, tax-exempt organizations and for-profit organizations, and equity investments in for-profit organizations; (6) a credit enhancement arrangement may qualify as a PRI; and (7) a private foundation's acceptance of an equity position in conjunction with making a loan does not necessarily prevent the investment from qualifying as a PRI." Internal Revenue Bulletin: 2016-2019, available at https://www.irs.gov/irb/2016-19_IRB, last accessed 6-12-2020.

⁶ Callison, J., and Vestall, A., *The L3c Illusion: Why Low-profit Limited Liability Companies Will Not Stimulate Socially Optimal Private Foundation Investment In Entrepreneurial Ventures* (2018), 35 V.L.R. 273, 274, n. 5.

⁷ <https://memel.global/about/>, last accessed 6-12-2020.

⁸ *Id.*

⁹ However, the Ton Ton Macoutes were not prepared to give up their informal control of the country and the UN -- including Ms. Burns -- was literally chased off the island with machetes.

¹⁰ For three years Ms. Burns crossed confrontation lines in a bulletproof vest, negotiating the passage of people and food convoys. Held for three months under house arrest, she continued this work from her mountain office.

¹¹ Email interview by author with Weeden, R., June 16, 2020. See generally his *Proactive Socialization: From Failing to Right-Siding* (how new organizational leaders assess business as usual and take needed risks to bring about improvement, innovation, and proactive placement of organizations at the forefront) (not yet published, manuscript available).



IN MEMORIAM

Martin K. Miller

Martin K. Miller died quickly and peacefully on January 20, 2020 at the age of 81. Born and raised in York, PA, Marty attended Tufts University and Cornell Law School where he met his future wife, Edie. He was a public defender in Philadelphia during the riots of the 1960's and later was an assistant district attorney there. He practiced privately, co-authored a book on trial practice, and taught as an adjunct at Penn Law School. The family moved to Vermont exactly 50 years ago when Marty was hired by Jim Jeffords to fill out an expanding VT Attorney General's Office. A significant part of his time at the AG's was spent representing Vermont in its suit against the State of New York and the International Paper Company concerning pollution in Lake Champlain. Marty was tapped by then-Governor Tom Salmon to fill the position of Chairman of the Public Service Board in 1975 which was the start of a long career involved with publicly regulated industries. In 1983 he and his partner began the firm of Miller & Eggleston which grew and nurtured his professional career until early 2000. The final chapter of his working life was spent as CEO of Vermont Electric Power Company, VELCO, in Rutland. Marty spent many years as the moderator of the East Montpelier town and school board meetings and volunteered for various town committees. Mary was most proud of his family, suffering the greatest heartbreak of losing his son, Johnathan in 1983. He is survived by his wife, children, grandchildren and brother.

Hon. Hilton H. Dier, Jr.

Hon. Hilton H. Dier, Jr., 93, passed away on April 27, 2020. Affectionately known for most of his life as "Spike" and by many simply as "the Judge," Hilton grew up in Lake George, NY. After graduating from high school, Hilton enlisted in the U.S. Army as an infantryman. He was eventually assigned to the Army of Occupation in Germany, where he served at the General Headquarters in Frankfurt. Hilton attended Cornell University and SUNY Albany, graduating in 1950. Following stints working as a radio announcer in Glens Falls and writing ad copy for General Electric, he attended Harvard Law School, graduating in 1956. Hilton clerked for Federal District Court Judge Ernest Gibson, practiced law in Brattleboro, and served as Deputy Attorney General. He was appointed to the Vermont District Court in 1968, serving in Addison County, and to the Vermont Superior Court in 1975, retiring in 1989.

Among his proudest achievements were his work founding the Vermont Public Defender's Office, and his appellate opinion clarifying the state constitution's protections of women's reproductive rights. Hilton married his wife of 62 years, Martha, in 1958, and the couple have lived in Middlebury since 1968. Following his retirement, Hilton spent time enjoying being a gourmet cook and published a cookbook in 2018, in celebration of his 91st birthday and 60th wedding anniversary. His wit and wisdom will be missed by many. He is survived by his wife and two children.

Hon. Ernest W. Gibson, III

Hon. Ernest W. Gibson, III died peacefully of natural causes on May 17, 2020 at Mayo Rehab and Continuing Care in Northfield at the age of 92. Ernest was born on September 23, 1927 in Brattleboro Vermont. He graduated from Western High School in Washington DC, completing his education at Yale University and Harvard Law School. Following graduation in 1951, Ernest served in the Army and spent several months overseas as a forward observer in a field artillery unit of the 45th Infantry Division during the Korean War. He completed his assignment in 1953 with the rank of First Lieutenant and two Bronze Stars. When he retired from active service, he joined the Vermont National Guard and two years later he was appointed to serve as Judge Advocate General for the Vermont Brigade, a post he held until he retired from the Guard in 1971 with the rank of Major and twenty years of military service. Upon receiving his JD, Ernest opened a law office in Brattleboro, and served as Windham County State's Attorney for four years. He moved to Montpelier in 1963 with his growing family to serve as Chairman of the VT Public Service Board. In 1972, he was elected by the Legislature to a Vermont Superior Court Judgeship and served in all 14 counties until 1983, at which time Governor Richard Snelling appointed him an Associate Justice of the Vermont Supreme Court, a position he held until his retirement from the bench in 1997. Prior to his judicial appointments, Justice Gibson represented Brattleboro in the House of Representatives, and served as Chair of the House Judiciary Committee. During his time in the State House, Ernest bonded with ten other new legislators - eight Republicans and three Democrats - who became known as "The Young Turks" and generally supported progressive legislation; the group remained friends throughout their lives. Ernest had a long history of service to his

community, state, and country and will be remembered by all who knew him as intelligent, kind, and humble. Always interested in games and sports, Ernest played first base on the Supreme Court softball team - the Court Jesters - until his retirement at age seventy. Ernest was predeceased by his parents, two brothers and a daughter and is survived by his sister, his wife of almost 60 years, Charlotte; their children, grandchildren and many nieces and nephews and their extended families.

Dianne Rosen Pallmerine

Dianne Rosen Pallmerine, passed away at the McClure-Miller Respite House on Friday, June 12, 2020 with her dear friend, Michal Eakin by her side. Dianne, affectionately known by her family as "Annie", was born on January 21, 1952 in Michigan, but was raised in Queens, NY. On August 28, 1999 Dianne married Robert Pallmerine in Fairlee and remained together until his passing on November 21, 2019. Dianne was a scientist before becoming an attorney. She graduated from Yale University, received a PhD. from Dartmouth and did post-doctoral work at Rockefeller University. She then obtained her J.D. degree from Pace University School of Law and went on to receive a post-graduate Certificate in Gerontology, which helped her in her Elder Law work. Dianne was one of the founders of the Vermont Chapter of the National Academy of Elder Law Attorneys (NAELA) and served as the first President of the Chapter from 2007 to 2009. She was a driving force behind the Chapter's 2012 Elder Law Summit and served as the Chapter's webmaster and elections maven. Dianne regularly presented educational seminars for lawyers and financial professionals. She was certified as an Elder Law Attorney (CELA) by the National Elder Law Foundation, one of only about 500 CELAs in the entire United States. She was highly respected for her leadership and integrity and as a strong advocate for those who had no voice.

Richard D. LeCours

Richard D. LeCours, 69, passed away on June 23, 2020, after a brave battle with cancer. A lifelong resident of Hardwick, Vermont, Richard entered the world on November 22, 1950. He was the eleventh of thirteen children born to Anselme and Violette (Dion) LeCours. Rick's intellect and humor made him a popular figure at Hardwick Academy. He graduated in 1968 and began his studies at the University of Ver-

mont the following autumn. He graduated from UVM in 1972 and enlisted in the U.S. Army, serving honorably in Germany. A deep thinker and philosopher, Richard's time overseas deepened his desire to be of service to others. Upon returning to the States, Richard channeled that ambition into a career in law. He attended Western New England School of Law and passed the bar in 1978, an accomplishment that made his parents very proud. He started his career as a public defender and then had a general practice serving the Hardwick area for over thirty years. Within the circle of his large family, Richard's love of music blossomed. Many good times were spent harmonizing with his siblings in the family kitchen on West Church Street. His beautiful singing voice and folk guitar graced many weddings and church services, as well as family hootenannies and gatherings with friends. A true gentleman, Richard's sincerity and generosity were gifts that he shared both professionally and personally.

Hedy Harris

Hedy Harris, 77, died July 1, 2020 at her home, in the loving care of her daughter and granddaughters. Hedy was raised in the Washington, DC area and relocated to, and fell in love, with Vermont after her parents retired here in the 1970s. Hedy obtained her undergraduate degree from the NY Board of Regents External Degree Program, and her JD from Antioch School of Law. A formative experience for Hedy was her internship at a community law clinic in Washington, DC while in law school. Hedy clerked at Vermont Legal Aid and the Vermont Public Defender's Office, in addition

to the law firm of Weber, Perra and Wilson in Brattleboro. Hedy was passionate about social justice and civil and criminal defendants' and women's rights. She served as staff counsel for the Women's Crisis Center for years before opening her own law practice which focused on representing domestic violence survivors and helping families achieve peace and justice. She once co-counseled representation of a murder defendant in Brattleboro with the renowned F. Lee Bailey. Hedy served for more than a decade as one of the first Case Managers in Vermont Family Court helping families in Windham County with her calm, kind common sense and legal knowledge. Hedy was very involved in the town of Townshend and served as a selectboard member, including as chairperson, and on other town committees over the years. Hedy loved her home, gardening, and cats, but most of all spending time with friends and her daughter, granddaughters and her three great grandchildren. She deeply loved being involved in their lives and caring for all of them.

Hon. Theodore Smith Mandeville, Jr.

Hon. Theodore Smith Mandeville, Jr. 92, formerly of Rutland, Vermont, passed away at his home in Pennsylvania on July 8, 2020. Ted was born on June 6, 1928, in Cleveland, Ohio and graduated from Denison University in Granville, Ohio. Ted enrolled in law school at Western Reserve University (now Case Western Reserve University) in Cleveland, but because of the outbreak of the Korean War, he left after his first year to serve in the Navy. He was assigned to a

cruiser, the USS Juneau, which saw action in the Korean Theater then later served in Germany with the U.S. occupation forces. Upon completion of his initial term of service, he returned to Cleveland to complete his legal education. Ted was then recruited into the Central Intelligence Agency serving in Washington, D.C., and again in Germany. In 1961, the Navy asked Ted to return to active duty to serve as a judge advocate in Washington, D.C. In 1962, Ted met and married Patricia A. Orye, a naval intelligence officer. They were transferred to Pearl Harbor, Hawaii, where their two children were born. Upon Ted's retirement from the Navy in 1972, the family moved to Vermont. Ted practiced law in Rutland until 1980 when he was appointed to fill a vacancy on the Vermont District Court bench. He formally retired in 1994 but continued to hear cases until 2007. Following his retirement, Ted and Pat enjoyed many trips abroad. Ted was an enthusiastic skier who also enjoyed golf and tennis, doing all three well into his late-80s. Ted was active in Grace Congregational United Church of Christ where he served on various boards and committees. He was also a member of the church choir and the Rutland Area Chorus for over 30 years. Ted also volunteered at the Rutland Regional Medical Center for 20 years; on the Board of Directors of AAA for Northern New England from 1994-1998; and as a member of the Navy-Marine Corps Retired Judge Advocates Associations. Ted and his wife were also passionate supporters of the Vermont Symphony Orchestra. He is survived by his wife, children and grandchildren.



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